DOCUMENT RESUME

ED 186 114 PS 011 387

TITLE	Whose Child Is This?
INSTITUTION	Illinois Advisory Committee on Nonpublic Schools, Lansing.
SPONS AGENCY	Continental Bank Foundation, Chicago, Ill.
PUB DATE	78
NOTE	70p.: Papers presented at the Illinois Advisory Committee on Non Public Schools' Conference (Chicago, IL, October 10-11, 1977).
AVAILABLE FROM	Illinois Advisory Committee on Non-Public Schools, 2261 Indiana Avenue, Lansing, IL 60438 ($2.50)
EDRS PRICE	MF01 Plus Postage. PC Not Available from EDRS.
DESCRIPTORS	Civil Liberties; Educational History; *Educational Responsibility; *Government Role; *Government School Relationship; Moral Issues; Nontraditional Education; Parent Participation; *Parent Responsibility; *Private Education; Religious Factors; *State Government

ABSTRACT

This document presents eight statements representative of positions taken by participants in a conference held to explore the relationship between the state and non-public schools. A historical perspective on the role of the parents in education, a lawyer's case for parental responsibility in education, parent involvement and parent rights are explored. Issues of educational freedom, religious liberty, state interference with parental preferences in education and family choice of educational services are also discussed. The statements conclude with an address by Dr. Joseph M. Cronin on the role of the state in supervising and facilitating public and non-public schools in Illinois. (Author/RH)

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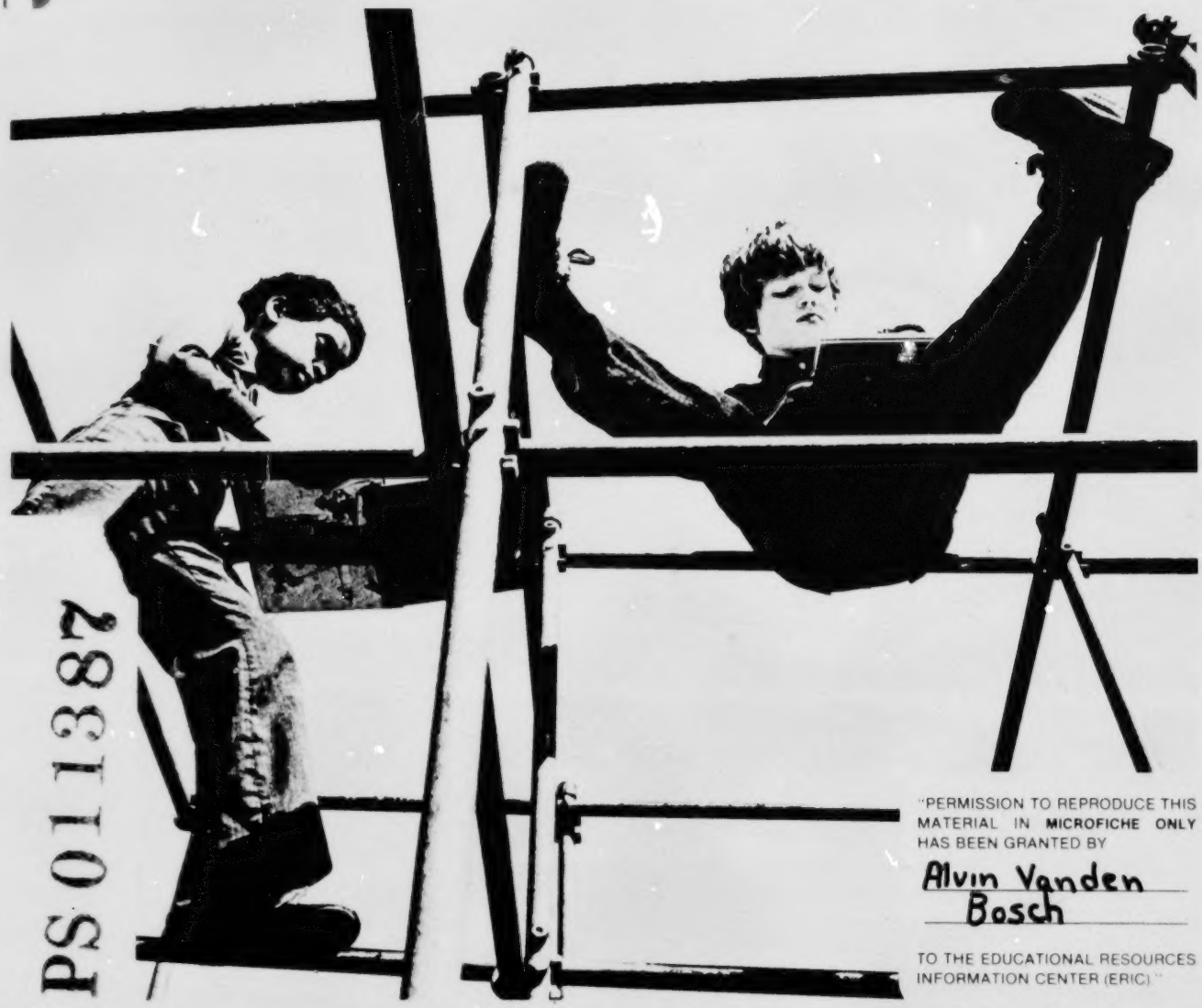

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WHOSE CHILD IS THIS?

Arising from the Illinois Advisory Committee on Non Public Schools' conference on the issue held October 10 - 11, 1977 at the Center for Continuing Education of the University of Chicago.

This publication has been supported in part by a grant from the Continental Bank Foundation.

Illinois Advisory Committee on Non Public Schools
1978

PS 01387

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THE ILLINOIS ADVISORY COMMITTEE ON NON-PUBLIC SCHOOLS

The Illinois Advisory Committee on Non-Public Schools was formed in March of 1971 when a group of interested educators and citizens met with the newly-elected Illinois State Superintendent of Public Instruction, Michael Bakalis. The purpose of the IACNPS was to represent the interests of non-public schools to the State Board of Education and the Illinois Office of Education. The original group was made up of representatives of interested non-public schools and representatives of each denomination or other non-public school group in the state. Later by-laws were drafted and the IACNPS membership was set as consisting of one representative from the education department of each denomination in the State of Illinois and one representative from any association representing ten or more schools in the State. In recent years the IANCPS has been active in promoting the interests of all non-public schools in Illinois, in working with the State Board of Education to create policies and guidelines for the Illinois Office of Education's relationship with non-public schools and in making public statements of the special contribution that non-public schools have made to quality education in Illinois and of their needs.

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INTRODUCTION

In the fall of 1976 the Illinois Advisory Committee on Non-Public Schools decided that there were some basic issues to education that were crucial to both public and non-public schools that had been either overlooked or avoided in the current discussion and debate about education. These issues all focused on the primary question of who is responsible for the child and therefore who makes the decisions concerning a child's welfare and education. From that concern the idea of a conference was born. The purpose of the conference was not to take a stand, stir an issue or promote a position. Rather we felt that it was essential that as many people as possible who have responsibility for the education or welfare of children should engage in a broad exploration of just who is responsible for a child.

The conference was held at the Center for Continuing Education at the University of Chicago on October 10th and 11th. From the speakers and reactors presentations we have selected statements that represent the full range of positions taken. It was the object of the conference to focus as well as extend the discussion and debate about this pivotal issue. We know that the conference achieved its objective and we hope that this book will serve the same end.

Mary Nelson

and

William D. Geer, Jr.

Conference Planners
and Co-Editors

Historical Perspective on the Role of the Parents in Education

Dr. Ralph L. Tyler

I accepted the invitation to speak on this subject not because I am an historian but because of my long involvement with educational activities in the home, the church, the school, and place of employment, four of the five institutions commonly regarded as the major educational institutions in modern society. In order to gain some historical background, I have been reading works in cultural anthropology and in the history of education. Lawrence A. Cremin, the eminent historian of American education, has contributed most to my understanding of this subject.

In seeking to learn from the past about the parental role in education it is almost necessary to note the particular role of the family in the larger society of a given period of history. The family has never been, nor is it now, a totally autonomous institution.

In primitive societies, the tribe was the basic economic and political unit. The problem of survival was an ever-present one as each tribe was beset by conflicts with animals and other tribes in the constant struggle to obtain the resources required for living. The role of the family and the individual was determined by the tribal governance, which also dictated what the child should learn and what his future role would be. Parents had no more voice in these decisions for their own children than they had for other children in the tribe. The survival of the tribe depended upon its cohesion and its closely integrated efforts in production, rational distribution, frugal consumption, and effective means of security. What role the child had as a child and what his future role would be could not be left to the differing preferences of parents----nor could his training and education.

As religion became a specialized concern of early societies, the primary claims of the Deity (or Deities) upon the beliefs, the guidance, and the actions of the tribe and its members led to the acceptance of the view that children were "God's Children" and God (or the gods) had first claim on their education. In practice, this meant that the religious specialist (priest, medicine man, or other) developed the specifications for the religious education of children and the assignment of responsibilities for religious instruction both to the home and to other appropriate institutions. At this stage of cultural development the distinction appeared in the responsibility of the political governance of the

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tribe and that of the religious specialists for directing the education of children.

Jumping over centuries of cultural development to Feudalism, one finds the tribal governance replaced the feudal lord who controlled a much larger population than the tribe. During feudalism the notion was prevalent and largely accepted that the feudal lord was "God's agent", and as such controlled and used the serfs as He decreed. Serfs did not decide for themselves what work they would do, nor could they decide on their children's future. What the child's training and education should be, and how they were to be carried on and by whom were decisions of the feudal lord; the parent's responsibility was to perform the child-rearing duties assigned.

As the national state emerged in China, in Europe, and in Japan, the national rules replaced the feudal lord as "God's agent" in all human affairs including education. As early as 1600 in Europe a vast system of universal, compulsory education had grown up centered in the churches. In England at that time Parliamentary acts required every individual to live within the discipline of some family or surrogate family. These acts enjoined all families to see to the proper religious and vocational training of their members. An educational configuration had developed of household, church, and school. The household carried the largest share of the responsibility for the training and education of children, but the specifications of the training and education were laid down by the state, and to some extent, by the church.

The establishment of the United States two hundred years ago stimulated the development of new views about the family, children, and education. During the struggle for independence and the construction of a written constitution the values of liberty, equality, and individual rights were strongly emphasized. At the same time, a deep concern was felt for the security of this scattered collection of people who had boldly established a nation in a world of stronger states intent on conquest and empire. This concern for national security was intensified by the experiences during the War of 1812 when our National Capitol was burned by the enemy. The Civil War made even greater the concern for developing national unity, essential to national survival. These four values are still strongly influentual in shaping the public attitude toward the education of children and the role of parents in this function, but the desirable degree of stress to be given to each is a matter of continuing debate, and the dynamic tension thus created results in changing priorities over time.

Our nation was conceived as a form of government designed to serve the people rather than the people being subservient to the state. In thinking of the people as sovereign, the "people" were conceived of as relatively independent individuals rather than the European conception of the people as a mass or a class. Hence, the view that became common was one of the state serving individuals. Governance, it was asserted, should restrict individual liberty only when the lack of restraint interfered with the life, liberty, or the pursuit of happiness of others. The concept of equality which began as a statement of the common humanness of all persons, developed into an individual right to be fostered and protected by the state. Whereas the Christian Community in colonial New England towns saw to it that every child obtained the prescribed education, when compulsory education was adopted by states with greater heterogeneity in culture, equality was interpreted to mean that the state was responsible for supporting the schooling of children of families that could not pay the tuition, and later, equality meant that the state was responsible for establishing and maintaining public schools. This interpretation, in effect, relieved parents

from the responsibility of supporting the financial costs of schooling for their own children. Those who were tax payers, of course, paid their assessed share of the financial needs of the public schools.

Over the years, equality has continued to be interpreted more and more broadly, with legislation and court decisions extending the responsibility of the state to insure equality of educational opportunity both through equalizing financial support among school districts and also through specifying instructional content and administrative procedures as in school desegragation.

Our national concern with individual rights was expressed at the time of the adoption of the Constitution when the first ten amendments, the Bill of Rights, were adopted. Although this value has been used to support the rights of parents to establish and maintain homes without strict controls by Church of state it is increasingly being used to justify the protection of children from parental actions. The Child Labor Laws, for example, prohibit the employment of children even when the parents want them to work and contribute to the family income. Laws and administrative regulations aimed at increasing the opportunities of women in the labor market frequently stress the right of mothers to work outside the home without regard to the adequacy of the training and education of the children provided by the home.

The importance of national unity was first expressed in the early days of our nation and the schools were seen as a major means by which the future citizens of the new nation could become responsible and devoted members of the country that was to point the way to the future form of all governments. Because the nation was established by thirteen colonies composed of persons of various religious, social and national backgrounds, the prevailing view was that parents could not contribute much to civic education.

This brief review should serve to indicate the changing and sometimes fluctuating attitudes and practices regarding the roles of parents and the family in the education of children. In the colonial period, in America as well as in Europe, the family was held responsible for training and educating their children. Parents were expected to teach them their religious duties, to see that they were vocationally trained, usually through apprenticeship, indentured service, or training in the home, and that they were disciplined in proper respect for authority and the law. Parents were responsible but they had no significant role in determining what the instruction should be. The higher ecclesiastical and political authorities specified the parents' duties and enforced their observance through formal inspections and informal reports of neighbors. Protestant settlements gave special stress to literacy since Bible reading was considered an essential part of the religious life. In these settlements parents were responsible for seeing that their children received instruction in reading and practiced by reading passages from the Bible. Sanctions were imposed on parents who failed to meet this obligation.

During the early years of our national independence the educational requirements for producing an enlightened citizenry were discussed and debated. The result was the shifting of many educational responsibilities from the home to the school. At that time the accepted view of a major role of the school was to instruct and motivate all children and youth to choose public over private interest. This meant to the leaders of that day that the school would teach some "proper combination of piety, civility, and learning designed to create a cohesive and independent citizenry." They saw this as a positive thrust away from Europe with its thousand year tradition of feudalism, despotism and corruption.

The War of 1812 intensified the concern for the survival of the new nation and the public turned to the schools rather than the home to instill patriotism, love of country, and devotion to the commonweal. The U.S. Supreme Court decision in the Dartmouth College Case established the principle of the right of private schools and colleges to exist but it did not enjoin the state from requiring certain content in the curriculum. American history and patriotic exercises were mandated as parts of instruction in all schools, private as well as public, of most states during the first half of the nineteenth century. In this period, schooling had been made compulsory, and in many states, public education was free not only for paupers but for all children. Parents were no longer held responsible for paying the tuition for their children. Local or county school authorities were very responsive to the wishes of those influential parents whose children were in public schools. As long as a child achieved literacy and received instruction in patriotism, his parents were free to choose his school, the range of subjects and the mode of instruction.

This situation shifted during the latter half of the 19th Century. The large number of immigrants who came with different languages and/or different traditions posed serious threats to national unity. The situations of Quebec, Alsace-Lorraine and Belgium were cited to indicate the danger of including very different languages and cultural groups within one nation. New York had witnessed riots and the burning of draft cards by young immigrants who received calls to serve in the Union Army during the Civil War. These stimulated the enactment of laws against the use of foreign languages in school instruction, the wearing of clerical garb in schools, and other practices that appeared to threaten the unity of the American people. Although the independent schools attended by children of the middle and upper classes were rarely if ever inspected because they were not considered dangerous, non public schools enrolling immigrants, especially parochial schools were frequently inspected and their curriculum reviewed. Parents were free to send children to the schools they chose but the options were few and the schools did not deviate greatly from the public school practices.

Early in the 20th Century, the rights of children received increasing attention. Laws prohibiting child labor and regulating apprenticeships greatly restricted the parental role in vocational training. The outbreak of the First World War saw bitter and prolonged fighting among the children of immigrants coming from different countries that were involved in the conflict. I was living in Nebraska at the time in a town largely populated by Bohemians (now called Czechs). Nearby was a settlement of Germans. The Bohemian children belonged to an organization dedicated to the overthrowing of the Austria-Hungarian Empire and the freeing of Bohemia. The outbreak of the war signalled the attacks and counter attacks of the youth groups. In other parts of Nebraska and in many states where immigrants from the Allied Countries lived near immigrants from the Central Powers, these pitched battles of children and youth went on. This was generally viewed as an indication that many persons had migrated to the United States for the material benefits available but without the intention of becoming devoted and responsible citizens. In Nebraska, laws were quickly passed forbidding the teaching of foreign languages (later declared unconstitutional) and specifying more in detail the curriculum of patriotism. Foreign-born parents were frequently viewed with suspicial for many were believed either to be subversive or ignorant of civic responsibilities of Americans.

This fear of disunity and even subversion flared up again as Stalin, Mussolini, and Hitler proclaimed their world missions

and a few organizations of American youth were formed to give psychological support to these foreign rulers. In response to this proccupation with foreign politics, text books in history and social studies were inspected by vigilante groups and sometimes by public authorities. Schools for young children organized by nazi groups and by communists as well as the youth organizations and after-hours schools were frequently harassed and came under more stringent supervision and regulation in half a dozen states. The Cold War and McCarthyism brought a short revival of these fears in the 1950's.

From 1954, the change in the accepted view of the parental role has been strongly influenced by the Civil Rights Movement. The Supreme Court decision in that year declaring school segregation unconstitutional led to a series of federal and state decisions and regulations that limited the rights of parents to choose the schools their children would attend, denied tax exemption to private schools that were judged to be involved in evading school desegragation. The decision in the Serrano case in California seemed to limit the power of a public school district to furnish educational services to its students that involved expenditures beyond those of the average district even when the tax payers, largely parents, voted higher tax levies. The extent of this decision is not altogether clear but it certainly requires the state to furnish financial support for poor school districts to enable them to operate an adequate educational program.

The Civil Rights Movement began with protests over the inadequate educational opportunities for Negroes, then expanded to include Spanish-speaking minorities, then other ethnic groups and finally females. Some of the resulting policies while increasing options for some groups of parents can become restrictive for individual parents as in the case of those parents in a certain ethnic community who wanted their children to move quickly into the mainstream of American life and did not wish them to take courses in ethnic language and studies who were denied this option by the majority of the ethnic groups.

Currently there is great confusion about the proper interpretation for education purposes of the basic American values of equality and individual rights. Some parents see non-public schools as means for maintaining separateness and inequality of educational opportunity and view compulsory desegragation as a violation of parental rights, while others support these policies with equal vigor.

The Civil Rights Movement also helped to bring to public attention the educational handicaps suffered by "disadvantaged children", that is, children whose parents are in poverty and have had little or no education. Beginning with local and state programs of "compensatory education" a great impetus was given to this effort through federal funds authorized by Title I of the Elementary and Secondary Education Act of 1965. This law furnished about $1500 per year per child as supplementary support for the education of children in schools having large concentrations of disadvantaged children. Head Start, supported by the Office of Economic Opportunity developed educational services for preschool children. Furthermore, in 1965, James S. Coleman conducted a study of equality of educational opportunity which concluded that the family background was the most important factor contributing to educational achievement.

These things brought to public attention the inadequacy of many homes in providing the conditions essential for educational achievement. Benjamin Bloom's earlier study had indicated the importance of the early years of childhood in intellectual development. A movement began to mandate pre-schools and thus provide professional services for young children to

"make up" for parental limitations; many compensatory programs for children combine parent education with that of the children. The effect of these movements has been to cast doubt on the practices and the wisdom of parents in rearing their children and providing for their education.

Today the public is being told in TV newspapers, magazines, and books that the family is deteriorating and will soon disappear. I am very skeptical of such extreme views but the public is bombarded with statements of prophets of doom such as: One of every three marriages ends in divorce, murder by parents is increasing at an accelerating rate, twenty percent of recent births were by mothers sixteen and under, illegitimate births may soon exceed the number born to married mothers, the incidence of reported child neglect has doubled in the past five years, whereas in 1950 the percent of mothers of school children in the labor force was 26 it has risen to 55, in a majority of homes the conversation and instruction of parents with their children has largely been superceded by both parents and children watching TV and saying nothing to each other, parents permit children to spend an average of 1500 hours per year watching TV while they spend only 1100 hours per year in school.

Against this Cassandra-like background it is easy to get support for the recommendation that public agencies take over family responsibilities. Furthermore, families in poverty are not encouraged to strengthen themselves under policies that furnish public assistance to individuals, especially children, and limit the assistance if the family becomes more capable of supporting itself.

Although most thoughtful adults recognize that parents vary widely in the extent of their concern for their children, in their ability to care for them and in their knowledge and wisdom relating to education, they do not see how to establish a fair and objective means for distinguishing the loving from the brutal, the responsible from the neglectful, the informed from the ignorant and in their desire to protect children they establish policies that severely limit the actions of responsible, caring, and informed parents.

Bureaucratic concerns also enhance the pressures for conformity to the prevailing school policies and practices. These are not wholly a reflection of the selfish interests of school personnel in seeking to protect their jobs. It is easy to understand why a devoted and industrious teacher or principal cannot conceive of other institutions or other practices being superior or even being greatly effective to the school and the practices in which he is involved. Furthermore, a professional educator having spent some time and effort in the study of action has difficulty recognizing the wisdom of a parent when the judgments of the two do not agree.

These bureaucratic concerns are evident not only in the affairs of the neighborhood and the school district but also in lobbying activities in the halls of the legislatures and of the Congress. These efforts have visible influence on administrative judgments, agency guidelines and on legislation.

In conclusion, it can be said that the prevailing policies in America regarding the role of parents in education have been changing during the past three hundred years. As time has gone on, the responsibilities of parents have been greatly reduced while there has been an increase in the extent to which parents are free to choose the content, the educational instructions and the mode of instruction. But this freedom is limited by the relatively narrow range of available options

and by the authoritative interpretations of the criteria liberty, equality, individual rights, and national unity as they apply to education. These interpretations vary from time to time, and in some degree from state to state. The available options are also restricted by statutes, administrative directives, and informal standards that utilize questionable or ambiguous indicators to judge the propriety and adequacy of particular educational programs.

At present there is confusion and conflict regarding the parental role. This makes it a favorable time for concerned parents to stimulate and guide the development of a constructive policy, appropriate for the current state of our society. This conference can contribute to that important goal.

A Lawyer's Case for Parental Responsibility in Education

David Gibbs, Attorney

The compulsory attendance laws and the licensure of schools have been the two springboards which have led to the courts being involved in the issue of who owns children. Compulsory attendance laws throughout the United States have in reality been with us so long we've come to accept them as customary and in fact they have a long standing history in tradition which leads back to the time of the Protestant Reformers. The question in regards to compulsory attendance laws are two fold: firstly, do they succeed in their objectives and secondly do they in their objectives encroach upon other protected liberties. It was the objective of Calvin and Luther as the reformers responsible for these laws that children should be brought to a perspective of education through the power of the state because that was thought to be correct without exception. Today this perspective is no longer taken in regard to compulsory education laws, but we have come to the philosophy of indicating that the state has a legitimated interest in seeing that children receive an education so that they can function in the society in which they are placed.

Does the system work? In Cuyahoga County, the county in which Cleveland, Ohio, my home, is located, we are told that approximately twenty-five percent of the students are habitually truant. Habitually truant being defined as they go to school not at all. The effectiveness of the truancy law is the difficulty of trying to enforce it. Truancy officers repetitiously state as they come to the stand that they go, they serve the papers, the children rip the papers up in their presence, and since they have no detention powers, and if they did, they have no place to put the children, the compulsory education law, in fact, in the inner city anyway, has yielded itself to be valueless. As we go further, the question then has to be asked are there other uses to which the compulsory attendance law can be placed which are legitimate? Since they have been the springboard off of which many lawsuits throughout the United States have been filed, the compulsory attendance law has been used to give the state the power to do two things: firstly, to define what is and is not a school, and secondly to define who has the interest of the child for purposes of determining his education.

The compulsory attendance laws in essence and in simplistic form state throughout the Unites States the following: all children shall receive an education at a school and the state then has broad powers in determining what is and is not a school. Throughout the United States today the litigation that

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we're encountering is focused upon the issue of what is and is not a school. All of the states with the exception of Mississippi at this time have a compulsory education law. Mississippi's law, although broader in form, requires education at a school approved by the parents. It has long been established since the Society of Sisters v. Pierce decision in 1922 that there is within this compulsory education framework the right of the parent to send their child to an alternative school other than the public school provided by tax dollars. There, however, has not been a good definition of whether the parents have a broad spectrum of powers based on personal determination. Throughout the United States now as they begin to determine what is and is not a school, we hear the term the state has rights predicated upon the doctrine of the informed electorate. The court, as it began to review these matters, said the state has a right in compulsory education because there is a doctrine in the United States called the doctrine of the informed electorate.

That doctrine says the following three things: firstly, that the state has a right to perpetuate its existence, secondly that in order for the state to perpetuate its existence it will be necessary for its citizenry to be able to participate in the affairs of government and society, and thirdly that since they have the right to exist, the right to see that basic education is compulsorily afforded upon all individuals irrespective of their beliefs or their position. This has been the rationale that all of the states have taken in granting constitutional status to the compulsory education laws throughout the United States. With these compulsory education laws two other questions have arisen. Firstly, if the school under examination does not meet the definition of the state, if it does not fall within the spectrum of definition that the legislatures have passed, is it in fact entitled to recognition for attendance purposes under compulsory education, and secondly, if a child goes to a school which is not recognized, is he truant?

The laws, and I refer to the laws of the State of Ohio, because I think that they, although somewhat advanced, are somewhat atypical of what exists throughout the United States, say the following: the legislature first passes what we call a general purpose law. It says that it is the desire of the legislature to afford all children an education so that they can become members of the informed electorate and that they can have the opportunity to participate in society and be meaningful citizens. Once they have passed the general purpose law they then set up a department of education or other bureaucratic apparatus and then give them guidelines. They say we want you to teach children how to read, how to write, how to do other specifically assigned tasks, and the reason that the laws are very brief here is because the court has said again and again that the rights of the state in giving the specifics of education are extraordinarily limited. They do, however, give these departments what we call a general empowerment statute which allows them to pass rules, regulations, and minimum standards.

So what we have is the state legislature setting the goal, establishing a department and saying to that department, go out and create rules and regulations which are livable within the spectrum of our goals. It has been in the pronouncement of these rules and regulations that the great body of litigation has arisen. In Ohio we call this the minimum standards. It is a booklet. Now that is somewhat of a misnomer because it's not terribly minimal. Depending upon how you count them, there are six to one hundred

and eleven. The second problem is they are not standards because they are terribly subjective. They tell you not what is required; they give you suggestions and say submit your program and see it if can be approved. So the difficulty people confront when they began to look at these standards is that they feel that they say three things: first, these standards are so vague and ambiguous that no one knows what they mean; therefore the state department of education has complete power to mold education to its emphasis within the state. The second thing that they find is that many of the standards make no sense. For example, a school cannot exist in Ohio unless it has sixty students. No one knows why; no one can give a rationale for it, but if there are not sixty students, it is illegal. You say that's a joke upon the state of Ohio, but unfortunately that's a requirement in many states. As people go to the witness stand they can give no justification for the existence of a minimum number of students, in fact, they tell us one of the most important ratios is the ratio of teachers to pupils, and therefore the fewer students perhaps the better the education. But none the less the state says there's something magical about the number sixty. As we go into these requirements, we find such things as the slant upon which drinking fountains must be set. We find requirements as to how playground equipment must be deployed; we find requirements that state the allotted number of minutes which must be given to different subjects to the exclusion of others. As people began to review these regulations what they said was, "These are not standards; these are molds, and if a school were in fact to fit the mold, we would lose the alternative which we desire to establish." The third requirement that people looked at and found objection to was the fact that with them is always the requirement of compulsory licensure, the right to make licit. This is not something new. Back as early as the Roman Empire, the Roman Empire insisted upon the right to licitize various activities and education. Licit is the root word from which we get the base word license. As people began to look at these standards, they said it's not only that the standards are unlivable but it's illegal to live contrary to those standards. Then we raised one further point. Throughout the United States today there is a movement of church schools suddenly springing up. A casual assessment now places their number at ten thousand with three to five new ones per day being established seven days per week. With this we suddenly had first amendment overtones being attached because these schools said you desire to license our school but now we raise the curious question for you, what happens if our school is in fact a part of our church and our faith? Does the state still retain the right to be able to license the entity in question?

The Supreme Court fortunately left us some instruction on this point. In 1972 it came down with the Wisconsin v. Yoder decision. Some people have read this decision and said that it's a curio to be set on a shelf, applicable predominately to people of the Amish faith. Others have read the decision and have taken the guidelines which are gleaned from it and have established the following: first of all the courst says that if education is provided under these guidelines, serious first ammendment considerations attach. Is the education granted by conviction or preference? Is the faith which underlies the format and the philosophy of the education a matter of conviction to the people or is it a matter of preference? Now the court said in this area we will give some definition so that people are not left stranded. Previous courts have also done this for us at the federal level. They said conviction is that element of a person's religious faith which is absolutely dog-

matic, unchangeable, irrespective of consequence.

In the Yoder decision, for example, they pointed out that Mr. Yoder faced monetary fine, incarceration, separation from his family, ostracism from the community at large. And the court said in spite of all of that Mr. Yoder would not change his position on the education of his children. The same was true, and I realize that my good friend Levi Whisner addressed you yesterday evening, when the court in his case said Mr. Whisner was a convicted criminal in the state of Ohio, had his wife a convicted criminal, determined that the people of his church who shared in his case were convicted criminals facing incarceration and fine, and yet they would not change in regards to the faith that they said underlied the educational process of their school. The court says that is conviction. It says it requires that element of dogmaticness, that element of being willing to face all consequence, for first amendment rights to attach. On the other hand the court said it's possible that schools are operated by preference. Preference is that which we strongly prefer but we're willing to concede that we don't have to have. We prefer it but we say that another position is acceptable.

Now the court in looking in the Yoder decision and in the Whisner decision subsequently said the following: only first amendment considerations that allow freedom under the free exercise clause of the first amendment attach in the convictional stand. The second thing that the Yoder decision addressed is whether there is some element of a traceable history: is this something which has just popped upon the scene, is that a johnny-come-lately, or is there something here which we can document that relates back to a history of faith. This was the criteria that most people thought would limit the Yoder decision strictly to the Amish people because they went to such lengths to describe the habits, customs and background of the Amish people. Surprisingly however, in the Whisner decision and other subsequent decisions, it has been traced that the education of children within the church by what has been called biblicist can be traced back to the time of Christ. As a matter of fact, it's only within the last one hundred and fifty years that there was a relinquishment by the church of this right. So suddenly as the courts began to look for traceable history, they found that one, indeed, did exist and that it was a very strong one. The third thing that the court looked for in the Yoder decision, that is being court tested today, is the question of life style observation. The court says we have a great deal of difficulty with this issue. People come into the courtroom; they talk with the lawyers; the lawyers have read the court decisions. As the people go to the witness stand, they use all of the magical words. They say I am educating my child as a matter of my religious faith by conviction. And the court says where did you get that language? And the person on the stand says Mr. Gibbs told it to me, or Mr. Bell told it to me or some other lawyer told that to me. The court says do you know what that language means? And the man says, "Boy, hang me, I don't know." So the court said that we have to have a test other than that which is purely verbal. We must have a lifestyle observation. Because the court said that if in fact children are being educated by conviction, it will be shown and documented through lifestyle observation.

Then the court went one step further and said that not only must there be a lifestyle observation but there must be a consistency. In the Levi Whisner trial I thought that it was unusual to the extent that they questioned him and his family as to the degree of their consistency of their faith. They said, "Mr. Whisner, do you do other things which

would be inconsistent with the stand that you are taking here today?" They wanted to see lifestyle observation consistently practiced. Now once we have established these things under the Yoder doctrine, the court has come to the conclusion that it is possible for two things to exist: firstly, that children be educated by the convictions of their parent and secondly, that the school in question be an inseparable integral ministry of the church. Having said these two things, the Supreme Court of Ohio by unanimous declaration stated that the state must define its position as against these people, people who educate their children by conviction and in situations where the church is an inseparable part of the school and vice versa. The Supreme Court of the state said unanimously, we are going to have a two-word doctrine as concerns the right of the state against these people. It is to be called hands-off. They said these people because of the first amendment and what they are doing are entitled to the freedom of enjoying the ownership, possession and use of their children in the furtherance of their faith. Now having gone this far, the court then says one further thing. It went into Yoder and said that there are some balancing considerations. These considerations deal with the right of the state to move against these schools and make requirements but they are somewhat limited. The court said that there are four areas in which the state can act. First, a school cannot advocate the overthrow of the United States government. The court said very blankly that you cannot in the furtherance of your faith or your school or the ownership of your child advocate that which would be treason. No difficulty here, that has never been the subject of any of the school cases that I have ever seen, but the court has uniformly laid down that position.

The second thing is that you may not in the furtherance of your faith adopt a position which occasions physical harm. No one knows exactly what that means. There are some clear and vivid examples. You could say that as an element of your school you are going to limit population by on alternating Thursdays sitting up on the freeway with a high-powered rifle. That would be a very clear example of it. Such has never been tested but then the question comes down further to how far does this question of physical harm really intrude. We have seen a rash of cases which we are going to discuss in just a minute in three areas called zoning, fire codes, building codes. Suddenly under the doctrine of the state's right in the physical harm area we are seeing suits within these three areas.

The third thing that they said is that you cannot have a sham education. They say that the state still has a right to see that the children are educated. Such has never been a problem in any of our cases. As a matter of fact, the quality of the education in any of these schools has never been an issue in any of the court cases. Now there is quite frankly a very simple reason for that. Upon comparison these schools test out better than public schools and the state quite naturally does not desire to bring into a courtroom evidence deragatory to their position of control. I thought it was amusing in some of our cases, especially early on that they requested the right to test, and when they tested, they called us and said, "Now listen there is a problem. We have a significant statistical deviation." And I said, "What type of statistical deviation is it?" And they said, "Well, you people should have scored two to three points below the norm because the children were tested in some areas that you don't afford curriculum in. Unfortunately, your children were

thirteen points above the norm. So they said we would like to retest them." Now at that point you know the thought goes through your mind that they could just have had a good day at the drawing boards, and you are reluctant to resubmit them to evaluation. At this point they came back and said will you please reconsider and allow us to retest them again, They did retest them again, and they called and said we have another problem. I said, "What is the problem this time?" They said, "The children tested out better the second time than they did the first time." I thought this comment was classic. The official said, "We are more satisfied with the first statistical deviation than the second." At which point we left the issue lay. The question of whether we are providing a sham education, the question of whether these children are functional, has never been an issue because the court says really that we must do but a very few things. The children must know how to read and write the English language. They must be able to compute in basic arithmetic terms. They must understand the workings of state and federal government. And beyond that the requirements are almost non-existent. The courst say that is about as far as the state has a right to proceed against these entities.

The fourth grounds is the grounds that no one can define, and that is the grounds of public policy. The court has said sometimes purely on public policy considerations we are going to allow an encroachment in this area of parental and first amendment rights. I think perhaps in the country today the classic case is that of the people who surrendered religious rights who practiced the Mormon faith. They were polygamist. The court ruled that this was going to be a monogamist nation. They said we can't find anything that is particularly harmful about your practices but on purely public policy grounds this will be a monogamist nation. Today we are seeing on these grounds a great deal of advancement because suddenly the state is the captor of what is public policy. No one knows how they got it, no one knows how they formulated it, but they are saying to us, your schools contravene public policy. Now when we ask them how a school which is doing a superior academic job at no expense to the state, which takes not the first dime in either county, municipal, regional or federal or state monies is contravening public policy, they can't tell us. But nonetheless they contravene public policy and it is that area of the court arena which we see constantly. The court then said one further thing which has been troublesome and has led to a number of cases under the establishment clause, and that is these areas of surrender are all affected by the taking of aid. A court said if you are going to take aid, the government has a right to control that which they finance. Now, unfortunately, it is a very restrictive test. People, when they ask me if they should take aid, I give them one of two answers. I say take none or take it all; because when you take it, you have sold your rights to run your school and you might as well get a good price. And so respectively the position that we have had to take before the courts is either to say we take none, or to argue effectively that it does not violate the establishment clause although right down to Meek v. Pittinger we are still arguing the issue of whether in fact we have the right to proceed in these areas.

Having established the Yoder and Whisner decision lines and having this large abundance of schools appearing on the scene, the courts have now been faced with what we call some divertive but controlling issues. And the divertive issues are issues which do not attack head on any of these areas but nonetheless can control them. As they went

to litigation the states found that they could not win against the standard test which I have laid down. Surprisingly enough, the church schools and the private schools under parental issues and first amendment considerations were able to prevail. But they came back and they discovered some interesting issues. All of our schools set on real estate. We have yet to get the first school who has learned how to float. As a consequence they made the determination that if they could control the real estate upon which the school sat, they could in fact be determinative of these other issues. We have seen issue cases arise across the United States today predominately in zoning, building and fire codes. Now the zoning cases come within the following purview. It is in the United States today extraordinarily difficult to zone out a church from any area. The Supreme Court of the United States has said only under the most aggravated and critical of circumstances will an area be able to zone a church out. And if you will read the cases you will find that when they say under the most extreme, they mean under the most extreme cases. Because the court has said to deny a person the right to sit down on the ground is to effectively take the first amendment and tear it to shreds. Now they have come in and they have said fine, you are not operating churches, you're operating schools, even though the Supreme Court in a number of decisions has said that our schools are inseparable parts of our churches by convictional belief. So they are coming back and they are saying the restrictions against churches do not apply against schools, and the way that we can control much of the private school movement is through zoning regulations. And the zoning regulations cover things like set back, square footage allotment, district zoning plot mapping and in essence generally unaffordable provisions to our interest. I don't know but perhaps this audience contains someone who is making a substantial amount of money off of education; but as a rule those who are involved in education do not have a great deal of surplus funds because the endeavor is extraordinarily expensive, and the amount of money that people can pay for it is normally limited. When they come in with all the rules and restrictions under zoning that can be imposed, we run into a wall which effectively deprives us of the ownership of the children and first amendment considerations because we can't use the land. To date the court has been deciding somewhat in our favor except for a decisions which was just decided in Concord, New Hampshire, where in essence what they said was that a school may not be a part of a church and vice versa. This is an area yet to be litigated.

The second area is fire and building codes. The difficulty we have here is similar. They come and they admit that we have certain parental rights, they admit that we have certain first amendment rights, but then they turn around and they say now in order to effectuate those rights we want the following changes occasioned in the building in which you are situated. And those changes are not nominal. They are normally multi-thousands, sometimes multi-hundred thousand dollar considerations. So what we in essence say is you have the right if you have the money, but if you don't have the money you effectively do not have the right. Now this has really created an unusual circumstance. I will use a church which I attend in Cleveland, Ohio, as an example. Our church has about three thousand people in it on Sunday morning. Twelve hundred of those will be children, and the building meets all fire and building codes and is perfectly legal. On Monday morning we open school with four to four hundred and fifty students and we are illegal because the building and fire codes have shifted.

Now why it is legal to have three times the number and illegal to have one-third the number no one has been able to give a justification. But across the United States today this is something we are facing. The second issue that has come up is what is a safe building. If we say that we have parental rights in these areas, if we say that first amendment considerations attach, then the question has to be what are the rights of the state under the area that we call physical harm. Remember that I said it is required under law that a building be demonstrated unsafe if they use it for intervention. The inspectors go to the stand and what they tell us is the following; and this has been true in every state that this has been litigated, and I trust that it is probably true uniformly across the United States. There is no such thing as a perfectly safe building. Every building is its own fire trap, because every building can only be made somewhat safe or safer but not safe. Now then they come to our schools, and for example at one school that they tried to close, they pulled a surprise fire alarm and were able to empty the building and have a head count in slightly less than thirty seconds. And yet it did not meet the exact conformity of the fire and building code and they red tagged the front door and said close it. We were sitting in a large government office and I asked the man how long it would take to empty this building. He said probably fifteen minutes. And the difficulty for the courts today is to decide are they going to require us in these areas to go to those little nitpicking areas of the law and have obedience at the surrender of parental rights and first amendment considerations or are we going to say they override. This is an area that is just now being adjudicated. There do not appear to be many decisions of first instance, and it appears that the position of the state is going to be complete conformity to the code is required.

The last area creating litigation today is that of licensure. The matter of making something licit. Licensure has addressed itself to three things; to the entity, the program and the personnel. In the area of entity under the first amendment we have great difficulty. Levi Whisner in his case testified that his school was an inseparable part of his church and for the state to license his school was to license his church. Everyone said that is craziness. There is no way of having a school being an inseparable part of a church, and yet on examination that is exactly what they found. And the court said that to allow the state to license the school was to allow the license of the church, absolutely forbidden by the first amendment.

The second thing is program. Not many states have delved into this yet to the extent that Ohio has. But in essence what they tried to do is cover the area with some degree of specificity about what they want to have covered. Those areas of history, reading, literature, English, etc. The court has uniformly said that if they have the right to propose and license program, it is the same as license of the entity because what is the entity without a program. And with this we wholeheartedly concur.

The last area creating difficulty is that of personnel and teacher licensure. Now the first thing that happens when we take a position in the courtroom that we are against the licensure of teachers is that people go up in arms and they say you obviously are not for quality education. Obviously I have spent a great deal of money myself and effort and time securing an education. Obviously these people who are fighting these battles are interested enough in their children to provide a school. Hardly would they want it to be an inferior school. But the question of licensure of personnel has raised some issues which need to be

answered.

Issue number one is if the school is an inseparable part of the church any person who works for the school works for the church, so you are not licensing school personnel, you are licensing church staff and personnel. As this issue has been taken before the court, the court has said we really don't know what to do because there are strong laws on the books giving the rights of the states to adhere minimum standards for licensure of teachers yet we do not want to license the faculty of churches. There has been no axiom resolution of this yet. It will probably come before the courst in two or three decisions that we have knowledge of within the next two years.

The second thing is these people have said what are they licensed in? The thing which makes any of these schools different is their philosophy. The philosophy of the schools who are represented by a caucus or forum of this nature is significantly different than the philosophy of the public sector. And yet the teachers are certified in public philosophy, not in our philosophy. As this issue has been dragged before the court they have largely said we don't know what to do with it. We recognized that it is a valid contention, but we do not think it is grounds for invalidating teacher certification.

The last area that the court has looked at is does it work? Now people come up and they say, "Well, teacher certification is to insure quality." Well, what that means then is that the public sector is reeking with quality at this time because they are reeking with their certification. And I use that not in a derogatory sense but in a sense of asking the very common sense question, does it work? Has it fulfilled and done the program that it is supposed to do or is it a burdensome regulation which is unworkable and simply does not satisfy the demands placed upon it. If, in fact, it does not, then a serious question has to be looked at by ourselves as we go into these areas for we have to recognize that the right to control the teachers and the admission into that field is the right to control the school. I am very concerned because we have seen these issues taken to radical extent. We have seen the compulsory education law and the issue of who owns the child go beyond what I think are all grounds of propriety and interest of justice.

In Canal Winchester, Ohio which is a suburb of Columbus, we saw a case where the following happened. The state had tried a number of cases wherein they had come in and they had said we have the license, and the court said no you do not have the right to license. In essence, what they always did was charge the parents with truancy and the children with truancy under the compulsory education law. In Canal Winchester they did a curious thing. Instead of charging the parents with truancy they charged them with neglect. They said because you are sending your child to a school that does not conform to the minimum standards, that's neglect. Now what that means in layman's language is that they are not giving their children what is required by law and that makes a child dependent. If a child is dependent, the state has the right to remove him from the home. In Canal Winchester, Ohio, they moved to take the children from the home strictly on these issues. Now you say, there must be more to it than that. No, that is all there was. They said put the children back in a public school and we will drop the charges. Keep them in that school and we are going to press the charges. Now the frightening element about that is that on legal blush they have these powers and the issue of who owns the child, and who does the school belong to are critical to determining the rights of the state to move in those areas. Now the

case turned out satisfactory because something was found. In order to be an approved school in Ohio you must meet all of the minimum standards. And it was surprisingly found that no public or private school met all eleven hundred. So if this school was guilty of anything, so was every other school in the state. We scheduled the deposition, that is the opportunity for us to question these people under cross examination. We had them brought before us and we said we want you to bring with you a list of all the schools who meet the minimum standards. That deposition was scheduled for nine o'clock in the morning. At two a.m. they notified us that they decided to drop the case and that the matter would not proceed to litigation or to deposition.

The question the symposium addresses is who owns the child which is critical in this type of litigation. By way of recommendation I would suggest but three things that must be the criteria off of which I thing much of this will hinge. First, I think there has to be on the part of the state a recognized withdrawal of what they claim to be compelling interests. Throughout all of the states in which we are now working, the phrase that we always hear is that the state has a compelling interest to be involved. We have to be there to protest. The base line on this is that the court says the states compelling interest is very limited, and on observation where we have seen the state involved, we have seen little satisfaction. We would suggest that the state has to withdraw their assertiveness of compelling interest.

Secondly, we are going to have to make a more clear determination before the court of what is in layman's language called the ownership of the child. Parental rights, state rights, first amendment rights, which will be subservient to which? I would strongly take the position that first amendment rights and parental rights are going to have to be recognized as being superior to the compelling interest rights of the state except in very limited areas where it can be shown that there is clear abuse or violation of some strong public policy.

Thirdly, we have to recognize that some of this will have to be done without litigation. Across America today we are litigation hungry, almost litigation crazed. The difficulty of it is that it is extraordinarily expensive. It's emotionally taxing and it's a form that does not answer any question quickly. If someone were to desire to come out of here with a constructive work I would ask you to find some means by which we can see these rights recognized without subjecting people to multi-hundred thousand dollar litigation processes that often take five to seven years before they are determined. Mr. Chairman I submit my position to examination.

Following his remarks Attorney Gibbs answered a number of questions concerning the right of the state to regulate and how non-public schools can make their position clear without going to court. Two of his responses are included.

I would like to comment at this point in time on a two fold point. It is the question of whether we are under or over-regulated. This question comes into all of these considerations about whether all regulations come at the expense of something. Now the question that has been broached here time and time again is are they, the state, acting as a leviathan adverse to our interest or is that a matter where the state is acting reasonably within its powers. The question that we have here that I think needs to be pointed out is first the schools to which we're predominantly addressing ourselves in this conference have not been accused of doing a substandard job, and inferior or inappropriate job. They are people whose interest has admirably

demonstrated that they are doing a superior job of education. And what they're indicating is that there are rights concerning their children and first amendment faith and religious freedom rights which are dangerously being trampled upon. And the question that I have is as I broach all this is, where do we have the balance? The Yoder court spoke in great length about the balance between the state and the church and who is the man who has the wisdom to strike the balance which is going to allow that freedom of faith which this country stands for, the most precious of its amendments, the first, and yet allow the state a compelling interest. I think if you read the court decisions, what the court is saying again and again is no man has that wisdom. And we're going to have to withdraw, and at this point I find no problem with the state withdrawing its compelling interest because the sector that they're controlling has across the board, at least in my opinion in the areas that have been statistically introduced in court, done a fine job. The second thing that I would respond to is it is certainly not the position of the people who have litigated these interests that the state is without power or position. But I think the question of any assertive, compelling interest of the state is first: is the proposed violation of some other protected area and secondly does it work? Today we have a problem. We like to look at programs that never ask the question do they work? Does it produce the desired result in the areas that we are looking at? Here, under compulsory education the statute was designed to put children in school and it's not working. In the area of defining a school, I think it is somewhat unusual in the courtroom when we take a half dozen different people to the witness stand out of one department of education and they can't agree on what is a school. And yet someone there has the power to criminally prosecute people because they're saying that there is not a school. That's dangerous when we subject people to that kind of jeopardy. So when I made the recommendation that I made concerning the withdrawal, I think that you have to understand that that is predicated upon the fact that one, the interests that we are protecting is doing a legitimate or qualified job and two, that we're into an area where people are subject to criminal prosecution predominantly on grounds that are just non-dependable in my mind.

In response to a question about how non-public schools might increase their leverage with the state and avoid the courts Attorney Gibbs responded:

Now I think that in this area what is going to have to happen is that we're going to have to restructure some of the presumptions and let me explain what I mean by this. Now I've said I'd like not to litigate and people say, "Why do you litigate?" It's because we get sued and have no other choice. We're on the catching end of this team not the pitching end. As a consequence, we're taken to court. The suggestion has been made on the panel that perhaps we could go through some of the administrative procedures and appeals. Well normally as a rule prior to the time of suit all of that has already been done, and the difficulty with both of those administrative agencies is quite frankly they're in the hands of the state and they tend to parrot the position of the department rather than giving any element of an afforded hearing. Now the thing that I think would determine much of this and help a great deal is if a few of the presumptions of proof could be reestablished and this is the difficulty we are having right now. What they say to us again and again is prove that you're a Yoder. And prove that you people have a right

to hold back these compelling interests. What public officials are really doing is taking the burden of presumptions that have been given them in prior areas and are forcing the parents to come back with clear proof. And I think that the only way you're going to turn around this litigation is to change some of those presumptions. Now having said that, how can it be done. That is of course going to require the court to rechange these presumptions and that takes more litigations, so we've really chased our tail on this one. It's like the dog after himself. Now, will it work? I think it's got to work because if it doesn't we're ultimately going to say that this is going to be a land that is only going to afford freedom to those who can afford to litigate, and that's extraordinarily dangerous. And that's exactly what's happening right now. There's a case in Indiana concerning a man who I think has a very meritorious position. You walk in to a man with a small church school and say, "Boy, you certainly have a right to win if we can just raise $200,000." What effectively are his rights in America? That's the thing that I think has to be overcome. These are not theories. These are actual cases and we just see this again and again.

Parents Must Be Involved

Rev. George Edgar Riddeck

Our schools have traditionally been seen in this nation as the balance wheel of society. The thinking of our early educators was that the public schools should become forces for not only for the change of the society itself but in fact the assimilation of millions of people who come from lands far and afield and who were here in this country in the condition of being refugees from other periods of time, even though they were contemporaries. So in fact our quest at that time was indeed to try to telescope centuries into decades with the process of public education. For millions of eastern Europeans, for millions of other Europeans who came her, and for some who came from Asia that particular process worked. But somehow as we came to the period of time when the blacks and Puerto Ricans in our society faced the quest of public education, the process broke down, and, of course, this is what really raises the question of alternative forms of schools. For what that issue is is not simply the quest for an education, but the quest now for an education that involves values, the quest for an education that takes seriously the parents in the process of public education. One of the very real factors that has come to present itself is a very forceful way for us in Operation Push with our Push for Excellence Program is that unless there is total participation of parents, of community leaders, of other forces within the community, of ministers, of lawyers, of the business community itself, education is liable not to take place.

The word education, as you know, educare, has its roots in the term to lead out, and that is not what will take place and matter of fact we know in the instance of our cities and in the experiences that we have had in the last 15 or 20 years, that not even training will take place in our schools. It is a sad thing to read that some 14 years after the report of the Kerner Commission with reference to the condition of race relations in this country that in 26 leading cities of our nation, 3/4 of our student body are going to schools that are 90% or more of one color: Most of these schools are underfunded and most of these schools are not imparting education but are imparting a very poor form of continuous supervision of children from K through 12, at the end of which period we find that most of those students are reading at between 6th and 8th grade reading levels if they are fortunate, and that a number of them are reading at 2nd and 4th grade reading levels. It seems to me that one of the differences is a difference that comes in terms of the involvement of parents in this process. While we're talking about public schools because those are the institutions we're most involved with, it seems to me that an alternative can be provided by Christian institutions, by schools that are outside of the general chain of the public school

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and that alternative represents the involvement of parents. Why? Our schools are going wild because there is lack of discipline in them, almost a bad word for a number of years as many of you remember during the 60's when we had so much contact with Christian Action Ministry. The question was how one educated the culturally deprived child. The question was not one of what expectations did we have of children growing up in diverse atmospheres of the country.

Now this is interesting, for as some of you will remember several weeks ago, the New York Times published a very interesting piece on the fact that though we were spending almost 75 billion dollars for the public education process, we were getting very little in return. And the excuses were in terms of the number of children per teacher, the teacher pupil ratio. Well, as a matter of fact this country did go through a period where children and some who were not so much children were educated around walls in rooms and in crowded conditions and the question of education was one which was fulfilled in terms of the responsibilities of the public school. So, the issues of course have to go far, far beyond the question of whether it's a matter of teacher per pupil ratio. The other question comes in, money, and I tend to be very sympathetic with this particular question for I do think we ought to spend more money on education. Certainly at a time when we can spend upwards to 119 or 120 billion dollars on the defense budget, the question of our priorities with reference to education is very significant, but at the same time money has not produced in any sense and any wild sense of the imagination in terms of correlation, the kinds of results that we had expected it to produce in the public schools. So the issue becomes who is involved in the educational process? And I think that is the key. The City of Chicago, and the Chicago United Organization published a report showing among other things; between 29% and 55% of the time in classrooms is spent on issues of discipline, or the question of unasigned homework or homework that is assigned and not turned in, one or the other. The report shows that of children who go to school over a 12 year period may be expected to lose upwards of 10 I.Q. points, not that I.Q. is all that important. It is significant that we have been able to quantify a direct loss of the academic potential of young people in terms of the type of schools they go to in many of our cities.

It seems to me therefore that the issue then becomes what we choose to do relative to our priorities and who becomes a part of the educational process. It is very obvious now that the language of the 1960's and the oversimplification of the educators in that period really validates the fact that education is much too good to leave simply to the professional educators. Professional educators - fine - we need them and we need their innovations and we need the kind of analysis they can provide. But in fact unless we have total involvement in the educational process which essentially begins with involvement of the parent, there is no real education going on. In terms of the crises of our city, the involvement of parents is very critical for the simple reason that our city schools as they go through the processes, for instance of desegragation, need at the very outset to have the input and the interaction of parents. I maintain, for example, had there been input and significant interaction of parents in the situation that brought us into confrontation on the southwest side of this city, we may have avoided much of the violence, much of the kind of distressing circumstances that has gone on.

We need input for another reason. You cannot divorce the present reaction of parents on the southwest side of our city here in Chicago and in a number of other fringe areas in cities throughout the nation from the fact that increasingly we are fighting over a smaller and smaller piece of the pie relative to education. I think this is significant. The largest portion of the educational dollar is not going to the child - the focus of educational management and policy development is not on the child. Someone has said that in the process of determining priorities the boards think of themselves, of budgets, of contracts that grow out of those budgets and finally somewhere 4th or 5th down the line, the student. And it's obvious, of course that one of the significant things that the alternative school system offers at this stage of history is the possibility of us to lift the child as the priority relative to education. I would hope we can do that and at the same time pay teachers decent salaries. I would hope we can do that and at the same time offer competent and capable management, but I am saying that what is important is that we lift the child and the education of the child as priority, and this is not what is going on in the current school crises. And that is why the crises increasingly grows worse and worse. And the more money we spend, the more of it goes down the drain for other things than the education of our children.

Then of course as one who is involved in the whole question of desegragation, one of the conerns I have is that the alternative schools can provide within our system quality integrated education. You have an opportunity now, relative to the experience of the public school system to address the whole issue of desegregation. I have watched the various dodges and subterfuges the public school systems have engaged in to avoid the law for the past 20 or more years, 23 years to be sure since Brown v. Board of Education. You are not impeded, caught up and hounded down with the question of drawing school districts and drawing attendance areas and therefore can deal with what is really at stake in the whole issue of desegregation. For what we're talking about is access and the future of our cities. Chicago, according to a report of Chicago Reporter magazine directly quoting Chicago United report, has added a net of 100 industrial plants but has lost 1,900 industrial plants in the last 10 years. Between 1967 and 1972, the city lost a total of 116,800 jobs, while the metropolitan area and the suburbs gained over 127,400 jobs. The future of the city, you see, is at stake. This city within a three year period lost 2.5 million square feet of plant and industrial space and somewhere in the neighborhood of 144 million dollars in investment funds for plants. Over 68% of the decisions relative to the building of plants end in decisions that moved those plants to the suburbs. That's the real issue in the situation. Of course as we see that issue and the real catastrophe and the real volitility of it relative to the future of our cities, we also see the potential for the demise of our nation. I say that you have an opportunity to change this with the alternative schools and what they have to offer. And it seems to me that none of this is divorced from the whole issue of the parent and the parent's involvement in education. All too many of our parents feel that the educational process is remote from them, beyond their reach. It is something that cannot in any sense be made manageable within the processes that they presently face. It is in some sense up to those of us who have the opportunity to offer significant alternatives to the public schools to make it manageable. Then, as you obviously know, what in fact your movement can do, is significantly improve the public schools and that's where most of the children are going to school. You can significantly improve public education by demonstrating that in an inner city setting it is possible

to have schools where violence and vandalism do not nationwide cost 166 million dollars a year. Violence and vandalism in school systems throughout our nation cost enough money for us to hire 52,000 teachers without increasing taxes by one additonal cent.

Alternative schools can also offer an opportunity to show the publis school system the essential bankruptness of valueless education. There is no such thing as anything that is value neutral, no such thing at all. And it is the challenge of schools like your own to scream out more about this. Yes, I said scream out. You're too quiet. You're too quiet in terms of the total spectrum of the education process; none of us can afford to be quiet. You cannot afford to say, "Well, this is a public school and this is a private." You also are a public school system operated from a different perspective, but you relate to and interact upon publics and those publics then in turn need to be heard from and they need in fact a voice in terms of the political process, relative to education. For, as a matter of fact, there'll be no special mark on your school or your student as over against public school students, if in fact our educational system should collapse, or our cities, in fact, should collapse in the wake of that catastrophe.

It seems to me that parental involvement is the keystone of the public education system which extends education beyond the mere technical and academic process to the total issue of where the community is involved and where the community interacts to see that the educational process takes place. There is no such thing as removing parental involvement from education. For without the parent there is no education. I repeat, no education takes place. If in fact we are to have education, the parent must be involved. Also, if education is to mean anything given the structural situation in which we are and given the political realities and the economic realities that we face, we must ask should we continue the present process. I cite, for example, that the national assessment on educational progress has noted that 21% of our urban students are functionally illiterate - this now with ships with equipment that now operate by computer. We are faced with a significant danger. It is no accident that last year fires cost our cities $166 million and vandalism cost our schools over 162 million. It is no accident, no accident at all. We are building within the process of our public education system, we are building and fueling, the fires of our own destruction. And that is why it is important that agencies, and I repeat it and I cannot repeat it enough, it is important that organizations like your own speak out. It is important that you insist upon more involvement in the educational planning process. And it is important that you significantly recruit. I guess one of the saddest experiences I had a couple of days ago was, as a minister, to introduce myself as a pastoring minister to a group of people who were meeting downtown to represent Christian Academies. After having some opportunity to talk to the group, it was very obvious that many of these Christion Academies were simply white schools, organized to avoid any involvement in desegregation and resist any form of racial integration pressed by the federal government and other agencies. So they opt just to stay away. would hope that as alternative schools we don't have the same type of feeling. For that's destructive - destructive not because it's a question of whether you love black people or whether I love white people - it's destructive because there are too many of our cities that are now majority or pushing towards majority black. It's destructive in the wake of the questions that are raised in the

Bakke decision, the issue of whether we are prepared to take compensitory steps to deal with the effects of past measures of discrimination.

If we are prepared to take that step, then perhaps we can hurdle the kind of roadblock that in the past have tended to make us a society which Kerner's report described as increasingly more separate and indisputably unequal. I say, the day of separate but equal is over! The day in which we feel that we can isolate ourselves from interaction with people of color is over. It's over locally and nationally. Yes, and it's over internationally. Andrew Young reminded us just a few days ago that of the 16 major world resources, 13 of them are found in the third world. Now you know that we are reacting with less than 7% of the world's population and yet absorbing each day 38% of its irreplacable resources. We've got to wake up. And that's a part of our education too. Thank you very much.

Human Rights in Education: The Rights of Parents

Dr. Nicholas Wolterstroff

Do parents have the primary right to determine the character of their children's education?

There are those in the contemporary world who say "No." I think, for example, of A. S. Neill of Summerhill fame, though he is but one representative of a position widely shared in the Western World. Neill was of the view that nobody has the right to determine the character of a child's education - nobody other than the child itself. Only the child has the right to decide whether he will learn this rather than that, whether he will cultivate this ability rather than that one, whether he will develop this habit rather than that one. Children as well as adults must be allowed self-determination. For children come with a cluster of innate desires and interests such that mental health and happiness will be achieved if, but only if, these are allowed to find their satisfaction within the natural and social environment of the child. Furthermore, each individual's mental health and happiness constitute what is for him the ultimate good. Accordingly adults have no right to lead children into the way that they, the adults, think they should go. Their responsibility is solely to provide children with an environment which is permissive, in that there is no attempt to impose the views and the rules of others into the child; and which is nourishing, in that it enables the child to satisfy his innate desires and interests.

I cited A. S. Neill as a well-known representative of this position. Actually I know no better brief statement of it than the following paragraph from the American psychologist G. Stanley Hall:

"The guardians of the young should strive first to keep out of nature's way and to prevent harm and should merit the proud title of the defenders of the happiness and rights of children. They should feel profoundly that childhood, as it comes from the hand of God, is not corrupt but illustrates the survival of the most consummate thing in the world; they should be convinced that there is nothing else so worthy of love, reverence and service as the body and soul of the growing child."

That then is one answer to the question whether parents have the primary right to determine the character of their children's aducation. Nobody other than the child has any right at all in this regard.

There are others in the contemporary world who would also say "No" to our question but who would offer a radically different reason for doing so. And if we look beyond the Western world, I dare say that there are vastly more of these others than of the A. S. Neill type. The people I have in mind are those who say

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that it is not the parents but the state that has the primary right to determine the character of a child's education. Parents may have the right to nourish their children in years of immaturity. Parents may have the right to be their children's guardians for a number of years. But when it comes to determining the character of their education parents have only a right which is secondary to, and derivative from, that of the state. For the child cannot just be allowed to flower in a permissive and nourishing environment. He must be shaped and formed for the welfare of the entire citizenry. He must be made to internalize those rules and convictions which will benefit society. Those who have the authority to determine which rules and convictions those are, are the officers of the state. For they are in charge of the welfare of the community - that being the ultimate good of the citizenry. Accordingly the officers of the state have the responsibility and the right to insure that the rules and convictions conducive to the welfare of the community will be imprinted on the student. Otherwise the community perishes.

One thinks here of all those ideologically totalitarian regimes with which our contemporary world sadly provides us so many examples. But lest we here adopt an attitude of complacent revulsion toward this point of view, let me quote to you a brief passage from the Education Code of the State of Ohio:

"The natural rights of a parent to custody and control of...children are subordinate to the power of the state to provide for the education of their children."

Every totalitarian regime whatsoever would be content with that statement exactly as it stands. The view is much closer to home than some of us might have thought.

I'm sure you all know as well as I that deeply embedded in the Jewish and Christian traditions, on which our society was founded, is the conviction that parents do in fact have the primary right to determine the character of their children's education. But those traditions are becoming increasingly attenuated among us. Accordingly today it is no longer persuasive for the defenders of that conviction simply to appeal to the deliverances of the Judaic and Christian traditions. The deep-lying issues must be probed. That I shall try to do, as I seek to make out the case that parents do have this primary right. For I am profoundly persuaded that the right of parents to determine the character of their children's education is one of the most fundamental of all human rights, more fundamental than the right to emigrate, a right to which our government has recently devoted much attention on the international scene; more fundamental even than the right to free speech. When this right is no longer acknowledged, then much of what is most precious in human existence is endangered.

Before I offer my reasons, I must make some explanatory comments about the concept of rights that I was and will be using. One defense for the view that American citizens have the right, let us say, to own firearms would be to point to the law - in this case primarily to the Bill of Rights attached to our Constitution as its first ten amendments. And when we look at the law we see that, Yes, it's true, American citizens do have the right, though not indeed the unqualified right, to own firearms. Similarly one might try to defend the view that parents have the primary right to determine the character of their children's education by pointing to the law. In that case, admittedly, one could not point to the Bill of Rights. For that says nothing on the matter. I suspect

that it says nothing on the matter for the simple reason that those who formulated those first ten amendments regarded this right as something that goes without saying. You remember that the men who wrote the Constitution even regarded the content of the Bill of Rights as going without saying - which is why it is not part of our Constitution itself. But even though we cannot point to the Bill of Rights, I do take it to be the case that the rights of parents on this matter are fixed in our law - though for all I know they may not be very firmly and unequivocally fixed. We would need a legal scholar to give us the full picture, and that I am not. The only part of the picture with which I am directly acquainted is the famous passage from Pierce v. Society of Sisters, a passage which I find curiously cautious and guarded:

"The child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations."

But when I said that I was going to argue for the view that parents have the primary right to determine the education of their children, I was not referring to a legal right. I was referring rather to a moral right, a human right - a right, which, whether or not honored by our legal code, should be honored by it and even, so I shall argue, insured by it. For a good legal code I take to be one which (at the minimum) honors the human, moral rights of the citizens, insures (guarantees) some of them, and does so in a fair, equitable, and just manner.

Now it seems to me that moral rights are always the correlatives of moral responsibilities. Some of my rights are the correlatives of responsibilities on my part toward others. They consist fundamentally in my right to exercise those responsibilities. They are what might be called my freedom rights - my rights to be allowed to act so as to be able to carry out my responsibilities. Others of my rights are the correlatives of responsibilities on the part of other people toward me. Since they have the responsibility to act toward me in a certain way, I have the right to be so treated. These are what might be called my rights of treatment. But either way, moral rights are never free-floating entities. They come as correlatives of our responsibilities. And often the best way to determine whether we do or do not have such and such a moral right is to scrutinize our responsibilities.

My thesis then is that the primary right of parents to determine the character of their children's education is a freedom right on their part. It is a straightforward correlative of their having the primary responsibility for determining the character of their children's education. If they do indeed have the primary responsibility for doing so, then they also have the primary moral right to do so. Our legal code should then honor that right. It should not violate it - unless absolutely necessary.

So the basic question, as I see it, is this: Is it primarily the moral responsibility of parents to determine the character of their children's education?

The child comes into the world as the result of the physical union of its parents - as the product of their physical substance. "Bone of my bone and flesh of my flesh" is how the ancient biblical writer spoke of the relationship. And we human beings are so created that almost invariably the result of this relationship is natural affection on the part of the parents for the child - nor-

mally indeed the deepest of all natural affections, wonderful and mysterious, one for which we have nothing even approaching an adequate scientific explanation.

Surely this natural affection is something good, something to be prized. When it is missing, as every now and then it is, we witness a sad deficiency in the lives of those parents, a lamentable absence of a deep human joy. Being good, being something that gives to parents legitimate joy, it is something that others have the responsibility to respect and that parents accordingly have the right of treatment to exercise. Furthermore, if this right is respected and the child is allowed to live with its parents, thereby enabling them to lavish on him their natural affections, then of course they have the responsibility - and correlatively the freedom right - to nourish him in his early years. Child neglect is a grievous wrong.

As the child grows and matures, the parents' natural affection for the child as offspring normally develops and expands into something rather different, into love for the child as a young person. It doesn't always. But when it doesn't, then once again we witness a sad deficiency in human life. For this too is a good thing. Accordingly others have the responsibility to respect it, and parents the correlative right to treatment to enjoy and exercise it.

But beyong their natural and normal inclinations, parents have a responsibility thus to love the child. For when the right of the parents to the joys of natural affection is honored by allowing the child to live with them, then gradually as the child matures it becomes the responsibility of the parents to go beyond feeling affection for him as offspring and to begin to love him as a person in his own right, albeit a young person. When he is not treated as a young person in addition to being an object of affection, then too a grievous wrong is inflicted on him. Correlative with this responsibility on the part of parents is the freedom right on their part to act in accord with those responsibilities. They have the right to treat him as a young person, him to whom they feel the ties of natural affection.

Much indeed goes into this responsibility of the parents to treat the child as a young person - one for whom they have affection. But prominent within it on my view, and I should think on the view of anyone who acknowledges that there are responsibilities, is seeking to nurture the child in such a way that his promise and dignity as a human being will be actualized. Prominent within it is seeking to rear him in such a way that he will mature into someone who acts responsibly while at the same time finding joy in his existence.

And that required education. One might even say that it just is education, properly conceived - that education properly conceived just is seeking to rear the child in such a way that he will mature into someone who acts responsibly while at the same time finding joy in his existence. But in any case, the parent who has the responsibility and the correlative right to love his child as a young person thereby also has the responsibility and correlative right to see to it that his child is educated.

Now if our human situation were such that we all agreed on what constitutes responsible action, that we all agreed on what constitutes the legitimate joys of human existence, and that we all agreed on how to educate for these things, then there would be no point in going farther to speak of the parent as having a right to determine the character

of his child's education. The character would be fixed, agreed on. It would be sufficient to speak of the responsibility and right of the parent to see to it that his child was educated. But of course one of the most fundamental features of our human situation is that we do not agree on those things. We do not agree on what constitutes responsible action. We do not agree on what constitutes the deep and legitimate joys of human existence. We do not agree on how to educate for these things. Accordingly, the parent's responsibility and right for the education of his child extends to his responsibility and right for determining the character of his child's education. It extends into the classroom, not merely to the point of having brought the child to the door of the classroom.

To see this clearly, go back to the beginning of our argument. I said that a parent's natural affection for his child is a precious and good thing, and that parents accordingly have the right so to be treated that their offspring can live with them and their natural affection satisfied. I went on to say that as the child grows and matures in intimate interaction with its parents, this affection for the child as offspring develops naturally and normally into love for the child as a young person. That too I said was a good thing, and parents accordingly have the right so to be treated that they can exercise this love. Indeed, I went farther and said that such love is not only a natural and normal development which is good but that it is a responsibility on the part of the parents toward their child with once again the correlative freedom right to exercise this love. From there I went on to say that treating the child as a young person includes promoting his maturation into someone who acts responsibly while at the same time finding you in his existence. But of course that means that it includes the parents' promoting the child's maturation into someone whom the parents view as acting responsibly, and someone whom the parents view as finding true joy in existence. It would not be love but perversity on the part of parents to promote his maturation into someone who they view as an irresponsible agent living a joyless existence. That is why allowing the parents to exercise love for their child requires allowing them to determine the fundamental character of the child's education. It requires allowing the parent to decide whether the child shall be reared as an aggressive secularist, or a Christian or a Buddhist, or with a strong black consciousness, or whatever.

You might reply at this point that my argument does indeed show that parents have a right to determine the character of their child's education, but that it doesn't show that they have the primary right. At best it shows that the parents have a right. For other people also are responsible for this child's becoming a responsible agent who will find joy in his existence. Why then should it be thought that parents have the primary responsibility? Is it not instead the case that the responsibility is spread evenly among all the members of the community - I as much responsible for your children as you for mine?

The answer to this objection is that human responsibilities always come in what might be described, metaphorically, as concentric circles of intensity. My responsibilities to my own children who have been living intimately with me for years are more intense than my responsibilities to the children down the block; my responsibilities to my own colleagues in the college where I teach are more intense than my responsibilities to the professors at, say, the University of Nairobi. And in general: My respon-

sibilities to those near me or with whom I intimately interact is more intense than my responsibilities to those at a distance from me and whom I don't even know. I readily admit that the acknowledgment of these concentric circles of responsibility, verying in intensity, may lead to a vicious parocialism. A person's responsibility to his own nation may loom so large in his eyes that it blocks out completely all sight of his responsibilities to other nations. Yet the fact remains that those with whom I am most intimately entagled in the affairs of life are those to whom I am most deeply responsible. That then is why the parent, with whom the child has been living in intimate interaction, has the primary responsibility for determining the character of his education.

To the argument which I have presented there is a response which all radical social reformers from Plato onwards, and which all ideologically totalitarian regimes, would make. Whenever there is conflict, they would say, between the welfare of the individuals and that of the commonwealth, the welfare of the comcomwealth must rule supreme. They go to to observe that when left to their own devices parents will often give a character to their child's education which is injurious to the commonwealth. To prevent that from happening, those who are primarily the officers of the state, must also have primary responsibility for determining the character of education in the commonwealth. So whatever may be said in praise of the beauty and goodness of a parent's love for his child, that love must be sacrificed on the altar of a higher good.

Some such line of thought almost invariable lies behind the conviction that the state has the primary moral right to determine the education of children. My response is simple and straightforward: the very first step taken by all ideologically totalitarian regimes when they come into power is to get control of the education of children. And that means, conversely, that the very best way to frustrate the rise to power, or the consolidation in power, of a totalitarian regime is never to allow the state to determine the character of the education of children. Right here lies the ultimate battle line for freedom and human dignity. We have more than enough evidence to know that nothing causes so much human suffering, nothing leads to such grievous assaults on human dignity, as these ideologically totalitarian regimes. Those rich and precious goods of parental affection and love that these regimes propose to sacrifice are not, it always turns out, sacrificed on the altar of a higher good. They are sacrificed on the greedy bloody altar of despotism and totalitarianism. There is indeed a good of the commonwealth. But that good will slip through our fingers once we no longer see the exercise of parental affection and love as an indispensable ingredient in it, and in consequence, no longer allow parents the primary right to determine the character of their children's education.

But what, lastly, about the objection of A. S. Neill and others that nobody whatsoever has the right to determine the character of a child's education - not the state, but also not the parents? Part of the answer is that it is sheer illusion to suppose that adults can avoid bringing influence to bear on the habits and commitments of children. But a more fundamental response is to ovserve that what is here at stake is the absolutely fundamental issue of the place of responsibility in human existence.

I said that to love the child includes caring for him in such a way that he will mature into a responsible agent who finds joy in his existence. I spoke thus because in my vision of human

existence - which, let me make clear, is the Christian vision - the essence of human dignity, the essence of what is unique to us among all God's creatures, is that we are responsible agents. Accordingly it is my view that when the parent fails to do what he can to rear the child so that he will become a responsible agent, he fails him at the most fundamental point of all. He treats the child as if he were only a complicated animal, a creature devoid of dignity. Likewise, to fail thus to rear the child is to fail in one's responsibilities to others. For though we can argue as to the cause of the phenomenon, the truth of the matter is that children as we find them are all too often mean and cruel. Accordingly, simply to allow the child to pursue his own inclinations and interests is to allow him to wreak his passion for meanness on others. And to allow that to happen is to act irresponsibly toward those others.

With none of this would Neill, so far as I can tell, agree. For the whole concept of responsibility has fallen out of his thought, as it has fallen out of the thought of many others in the contemporary Western world. Or better to say, it has been pushed out. And to push out the concept of responsibility is - let it not be overlooked - also to push out the concept of human rights. The goal of human existence is seen as simply the pursuit of one's own mental health and happiness - though to that too no one has any <u>right</u>. There is one exception: Neill - and on this he is like most other contemporary antinomians - reserves to himself the authority to order a child to desist when his actions threaten the very existence of Summerhill. Yet on Neill's view there is no <u>ground</u> for such an order to desist. He himself has no <u>right</u> to issue such an order, neither does the child have a <u>responsibility</u> to treat the community in a certain way. Thus does libertarian antinomianism turn into sheer authoritarianism.

One link in my argument remains to be forged. From the fact that you and I have some human, moral, right, it doesn't follow that the legal code of our society should insure that right to us. The law couldn't possible insure to us all our moral rights, nor should it try to do so. So the question remains whether the human right of parents to determine the character of their children's education should be insured to them by the legal code of our society. In this particular case, the reason for thinking that this human right should become a legal right is obvious. It is unavoidable that our legal code assigns to someone or other the right to make decisions concerning the character of a child's education. And since assigning it to anyone other than parents would be an active violation of their human rights, since in addition it can be assigned to parents, that is where it should go.

I rest my case. I have contended that the legal code of our society should secure to parents the primary right to determine the character of their child's education. And let me add that afortiori that means that our legal code should secure to a <u>unified community</u> of parents the right to determine the character of their children's education, and thus to pass on to them their way of life. I could have defended this conclusion by appealing to one and another <u>social benefits</u> to be expected from a society so ordered. I could for example have argued that a society so ordered will encourage competition in education, and that that in turn will yield an assortment of social benefits. I could have argued that a society so ordered will promote community identity, and that that is a good thing. I could have argued that given the psychological depth of the parent/

child relationship, a society so ordered will produce better education, since nobody over the long haul will care as much for the education of the child as the parents. I could have argued that only a society so ordered will secure religious freedom in a society which is religiously diverse. All those conclusions I believe to be true. But here I have tried to do something more basic and more fundamental. I have tried to show that among our fundamental human rights is the primary right of parents to determine the character of the education of their child. It is because that is a universal human right that I have concluded that every society should secure, and with as few encumbrances as possible, the primary right of parents in the education of their children.

The picture sketched would be misleadingly incomplete, however, if I did not go on to say at least a few words about the rights of others with respect to the character of a child's education. For beyond a doubt others do have moral rights in the field of education: teachers, members of the society at large, the child himself, groups and institutions.*

I begin with the state. What are the rights of the state with respect to determining the character of a child's education? None! None at all. In fact, not only does the state have no right to determine the character of a child's education; it has no rights whatsoever, that our legal codes should respect, with regard to how our children are educated. But then, neither does it have rights in any other field that our legal code should respect - other than just the (non-absolute) right to be obeyed. Perhaps the radical tone of that contention shocks you. But reflect: The business of the state is to honor and insure your rights and my rights, along with the rights of our communities, associations, and institutions; and to do so in a just manner. In order to carry out that task the state has the right, though most emphatically not the absolute right, to ask obedience of you and of me, and to exact punishment when obedience is not rendered. But that is the end of the matter. The state's whole business in the field of education is to honor and secure the educational rights of persons and groupings of persons.

What then about teachers. What are their rights with respect to determining the character of a child's education? Also none. The teacher does indeed have rights with respect to the education of children - principally as I see it the right to exercise his professional competence in his teaching. But the teacher has no right whatsoever to determine the character of the child's education. Parents have that right, and that responsibility. So as to carry out their responsibility they come to the teacher, asking that the teacher be of service to them. And the teacher offers his services.** But if the parents find those services not to be in accord with their fundamental convictions, they have the right, indeed the responsibility, to go elsewhere. The teacher's moral rights with respect to the education of the child are limited to exercising his professional competence within the framework desired by the parents.

Of course if we were going to discuss

*The matter of the rights of groups and institutions is extremely complex, and here I shall forego saying anything on the matter other than my comments about the state.

**Or that is how it would be if we fully respected the rights of parents. The truth is that in American society the public school teacher has a captive audience. He is not, like other professionals in our society, one who makes his services available to those who desire it, in competition with others offering similar services.

the matter in more detail we would have to sharpen up this line between issues pertaining to the character of the education and issues to be settled by judgments of professional competence. For often the inclination of the teacher is to regard as an issue of competence what the parent regards as an issue of overall character. Let me say only that, for most of the disputes arising in public schools that I have read about in recent years, my inclination has been to side with the parents. To cite but one bone of contention: A parent has the right to ask the child not to read J. D. Salinger. The judgment that it would be good for the child to read Catcher in the Rye is not a judgment based purely on professional competence.

Thirdly, what about the rights of other members of society with respect to the character of my child's education? And here, as when I get to the rights of the child, I must limit myself to speaking of those moral rights which it would be good to have secured to us as legal rights in our society. The society in general and the child have, in my judgment, a good many moral rights vis a vis the parents which it would not be good to enshrine in our legal code - in part but only in part because there is so much disagreement on those rights.

On the matter of your and my rights with respect to the education of some other parent's child, I think that in the first place we can do little better than adopt the formula which has guided us in free speech cases in this country for some fifty years now. If a mode of education that a group of parents is offering to their children is such that it constitutes a clear and present danger to our society, then your and my rights as members of that society are being infringed. And for the sake of protecting those rights, the state may and should intervene. (It is perhaps debateable whether from this one can get the right of which our courts speak - society's right to an "informed electorate.") Secondly, when the mode of education that a parent gives his child is so grossly deficient, given the society in which we live, that the child will almost certainly grow up to be a burden on society, then again your and my rights as members of that society are being infringed. And for the sake of protecting those rights, the state can and should intervene. But those should be the limits of the legally guaranteed rights of others with respect to the education of my child. Always there has been in our society the powerful urge to go further - to insist that the Amish use certified teachers and thay they educate their children through high school, to insist that all children shall be taught reverence for the flag, and so on and on. All such pressures are violations of the human rights of the parents.

Lastly, what about the rights of the child with respect to the character of his education, rights that should be secured in law. For he too has rights - let us not forget it! In the first place, the child has the right to be educated, and not only that, but to receive an education relevant to life in the community which he will likely enter. It is a violation of his rights to condemn him to being an unhappy, non-functional misfit. Secondly, he has the right to be treated non-abusively, and not be submitted to substantial and avoidable physical danger, in his education. When either of these rights is denied him, then the state may and should intervene to protect those rights.

It would be remiss on our part if we closed this discussion on the rights of parents and others in the education of children without inquiring into the state of our Union with respect to the fundamental human right that we have been discussing - the primary right of

parents to determine the character of their child's education. Can we in the United States rest content on this matter and turn our attention to the deprivation of this right in other countries, or to the deprivation of other rights than this one in our own as well as in other countries? Does our legal code secure to all of us this right with as few encumbrances as possible? Does the actual structure of our society assure it to all of us with as few encumbrances as possible?

Is the right of the Catholic parent to determine the character of his child's education secured to him in our society with as few encumbrances as possible? Is the right of the Lutheran parent to determine the character of his child's education secured to him with as few encumbrances as possible? Is the right of the Orthodox Jewish parents or the Calvinist parent, or the black parent concerned to promote black consciousness in his child, of the parent in New York City struggling with the teachers' union in order to get more autonomy for the local school district - is the right of all of these to determine the character of their children's education secured to them with as few encumbrances as possible?

The list could go on and on. Only those blinded by their privileged position in the present arrangement can fail to see that in our society there is massive deprivation of human rights in the field of education. I am constantly amazed that some of the same people who guard so fiercely and zealously our right to free speech, that some of the same people who when doing social work stress the great importance of the family stand passively unconcerned when masses if parents in our society, in order to educate their children in accord with their convictions, must pay heavily for it while others are offered it free, or must engage in a titanic struggle with a teachers' union, or must fight off the encroaching bureaucracy of a state board of education.

Of course I know the stock response, at least to the religious groups I have mentioned. The reply is always that these groups are perfectly free to start their own schools where they can educate their children as they wish - within limits. But this answer exhibits the most elementary confusion, which only its constant repetition could obscure from anyone. Earlier I distinguished between freedom rights and rights of treatment. Now among our rights of treatment are certain rights that might be called <u>benefit rights</u> - the right to receive some tangible benefit or service from some other person, or from the community at large. Already in the 19th century the various states in our union decided that parents of children had the benefit right to receive financial aid from the community at large for the education of their children. Accordingly the public school system was established across our country. Thus in the field of education we in America for over a century have recognized two distinct, though related rights: The <u>freedom right</u> to educate one's child in accord with one's convictions, and the <u>benefit right</u> to receive financial aid from the community at large for the education of one's children.

Everybody in this country is secured the freedom right to educate his child in accord with his convictions. (I don't wish to downplay the existence of threats to this right.) For that we are all grateful; there are countries in which it is not so. But the benefit right to receive financial aid from the community as one educates one's child in accord with one's convictions is distributed with gross inequity in our society. Millions of parents have been saying with full clarity for over 150 years that the public school education offered them free is one that they cannot in good conscience accept - that it is out of

accord with what they believe should be the character of their child's education. Accordingly they are inequitably deprived of a benefit right. To reply to their grievance by saying that they have all the rights everybody else does, because they like everybody else have the freedom right to educate their child as they wish, is obvously and grossly beside the point. Nobody contends that this freedom right is distributed inequitably in our society. The contention is that the benefit right is distributed inequitably. To that charge there is no answer. Obviously it <u>is</u> distributed inequitably - when equally obviously we could distribute it much more equitably if we wished.

How did we ever get into this situation? And what is it that keeps us in it? Several things. One is the deep conviction among many Americans that unless the vast bulk of our students go to a common school, there to be inculated with what is nowadays called the American civil religion, our nation will fly apart. Another is the equally deep conviction among many Americans that diverse religions are all really sectarian versions of one and the same basic religion, so that religious liberty is fully achieved if our publicly supported institutions are based on what is supposedly common to all and the sectarian variations are confined to the private life of family and church. Yet a third is the deep conviction among many Americans that both the religious man and the secular man share a common morality and a common science, so that even if all vestiges of religion must be removed from our public institutions so as to achieve consensus, then still it is the same fundamental convictions of everybody are being honored. And a fourth, less fundamental than any of those but fully as important nowadays, is the tendency of our governmental institutions in general to remove decisions from the people in the interests of bureaucratic efficiency and effectiveness.

All those, and more yet, are the currents in our society which have led us to neglect this deprivation of human rights in the field of education. It is high time that we Americans, who in my judgment are rightly concerned with the deprivation of human rights around this small globe of ours, should reverse our field at home and devise new patterns for the support and control of education which will lift these burdens of oppression from the backs of so many of our fellow citizens.

But I must end with a word to parents. All that I have said is based on the premiss that the right of parents to determine the character of their children's education is grounded on the <u>responsibility</u> of parents to determine that education. Accordingly, if parents do not exercise this responsibility all that I have said will be but hollow talk. Then the control of education will inevitably drift to the state and federal bureaucracies, and to the powerful teachers' lobbies and unions. Where else could it go? And parents will be left helpless.

Once upon a time, in the religious traditions on which this country was founded, parents saw a child as a precious gift from God of which they were the guardian until his years of maturity. They saw themselves as charged by God with treasuring this gift and nurturing it so that it would reach its potential and dignity as a human being. That vision we must try to recapture. When a parent fails in his responsibility to nurture his child so that the child will grow up a responsible agent finding joy in his existence, then the parent has failed that child as badly as anyone can fail a young human being. And when the bulk of parents in our society begin to act thus, then a society in which man can

live in freedom and with dignity is lost beyond saving. When responsibility goes unexercised, then the legal right to exercise it will eventually be seized from us.

Educational Freedom, Parental Rights and Religious Liberty

Rev. Levi Whisner

How far can the states go in imposing so-called "minimum standards" on private schools? May a state criminally prosecute and punish parents who send their children to a good quality school which does not meet all five hundred "standards" drafted by a state educational department? May it force a good school to shut down? What if some of the "standards" don't make sense and can't be understood? What if standards directly violate the religious liberty of children, parents and a school? What about educationally unsound standards or standards that would take public funding to meet?

These are some of the questions involved in a case now moving up in the Ohio courts entitled State of Ohio v. Levi W. Whisner, et al. Pastor Levi W. Whisner is principal of Tabernacle Christian School and "et al." refers to ten other parents whose children are enrolled there. A year ago the State of Ohio summoned them before a Grand Jury, where they were indicted for crime "against the peace and dignity of the State of Ohio." The crime was truancy. On May 7 and 8 they were tried for this crime in the Darke County Court of Common Pleas at Greenville, Ohio, and on August 30, 1974, found guilty and sentenced. They promptly appealed to the Ohio Court of Appeals, with which their attorneys have now filed an extensive brief. The case is expected to be argued early this spring. A classic constitutional confrontation between state power and educational freedom is in the making.

The Background

Back of the truancy charge lay the following brief history. A number of parents in the Greenville, Ohio, area decided, in 1972, that the time had come to found their own school. Though of somewhat differing religious backgrounds (Church of the Nazarene, Baptist, Dunkard, for example), they held in common an intense belief in the Bible, the divinity of Christ, and the absolute necessity of being "born again" Christians who must avoid worldliness and

Rev. Levi Whisner, Principal of Tabernacle Christian School and Pastor of Tabernacle Church, was convicted on August 30, 1974 of failing to send his children to an accredited school in Bradford, Ohio. The School filed suit against the State, saying it could not meet 14 of the 500 standards set by the Ohio Education Department, primarily because of religious grounds. In July, 1976, the Ohio Supreme Court unanimously ruled that the parents could send their children to a non-public, religious school, even though it did not conform to minimum standards set by the state. The majority opinion, written by Judge Celebrezze, said, "Under the facts of the case, the right of the appellants to direct the upbringing and education of their children in a manner in which they deem advisable, indeed is essential, and which we cannot say is harmful, has been denied by application of the state's minimum standards as to them."

follow the teachings of Christ in their daily living. For these parents, these beliefs had necessary consequences: the parents dared not have their children in the public schools where such beliefs are not instilled and where, so the parents felt, the moral climate is negative. Nor were there any parochial schools in the area which provided the Bible-centered education which they knew their children must have.

The parents - all of modest means and several having good-sized families to support - decided that they would make the financial sacrifices necessary to build and staff a religious school. All this, in spite of inflation and while continuing to pay taxes to the Greenville Public School District.

Leader of the parents was Reverend Levi W. Whisner, pastor of Tabernacle Christian Church. The new school, at Bradford, Ohio, opened its doors in September, 1974, with an enrollment of 25 pupils, one highly experienced teacher, Mrs. Myrtle Smits, and several parents who served as teacher aides. The spacious new combination church and school building passed muster with local safety and health officials. An educational system, known as "A.C.E." (Accelerated Christian Education) was installed. The A.C.E. program, originating some years ago in Texas, is now widely employed in Bible-oriented schools nationally. Its sponsors believe it to be both highly effective and highly economical. It cultivates those basic skills, the lack of which, as critics such as Vance Packard has said, is creating "a nation of illiterates".* The system places prime reliance on individual effort and the stimulating of personal achievement. Apart from what its sponsors say are to be these distinctly educational attributes, the A.C.E. program also completely permeates the child's education with Christian, Biblecentered teaching. That, of course, is the primary purpose of the program. As Pastor Whisner puts it:

"We want our children to be well trained to earn their living - of course. But they have that training in a Christian atmosphere, with dedicated Christian teachers, and with the Bible as the foundation."

The Prosecution

Soon after the opening of Tabernacle Christian School, trouble began. The parents and children started receiving notices from public school officials informing them that the children were truants - that is, that they really weren't in school at all. And this, the parents were told, was because Ohio statutes require that all children (with few exceptions such as for the handicapped) must attend a school "which conforms to the minimum standards prescribed by the state board of education." The school's board of directors were surprised. By any sensible definition of "minimum standards", Tabernacle Christian School, they felt, was a fine school. The State Department of Education soon corrected this innocent impression. "Minimum standards", said the Department, didn't mean what it sounded like. It meant, instead, a hefty book of 150 pages (with much fine print). A school had to comply with that - or it wasn't a school to which a child could be sent.

The school found it could not totally comply. Some of the standards were religiously offensive. Some were educationally bad. Some confusingly worded. Some would take a fortune to comply with, if followed literally, the Minimum

*Reader's Digest, April, 1974, page 2.

Standards would pretty much convert a private school into a public school.

Pastor Whisner and his board had no doubt that the Standards were to be read literally. The State had said "This is the law", and Whisner was not about to say it wasn't, or that the school could pick and choose among the Standards. And these forthright Christians refused to play games with the State by feigning compliance or begging for a "broad" interpretation. They could not comply, and the prosecution proceeded.

At this point, the parents retained constitutional lawyer, William B. Ball, of Harrisburg, Pa., to defend them. Ball had recently defended Wisconsin Amish parents in a case before the U. S. Supreme Court - which, in a widely heralded decision, upheld the right of the parents to educate their children of high school age in the Amish way and not in schools.

Columbus, Ohio: The School's Offer of Compromise

The attorney now sought a meeting with Department of Education officials, feeling that the matter could be legally resolved. Pastor Whisner, and a group of pastors having A.C.E. schools in Ohio thus met at Columbus on January 22, 1974, with Jack E. Brown, the Department's Director of Elementary and Secondary Education. They explained their objections - especially their religious concern. By letter following the meeting they offered to submit by April 1 a plan showing the total school organization and program, plus information and commitments corresponding to those contained in the Minimum Standards. They added one vital condition:

"...so far as is consistent with our religious beliefs."

The letter expressed the hopes for a favorable response. The Department never responded.

The Trial

A two day trial took place in April before Judge Howard G. Eley at Greenville. Cross-examination of State's witnesses brought forth the fact that the "truant" children had never been known to be in trouble with the law. The State's witness Jack Brown, testified that the "Minimum Standards" were the law. He indicated, nevertheless, that some could be complied with and some didn't have to be. Thereafter defense witnesses took the stand, led off by Pastor Whisner. Under intensive interrogation by Ball and by Lee G. Fry, state prosecutor, he set forth in detail the religious and educational objections which the school had to the Minimum Standards. The following summed up his position:

"Q. I am going to ask you, why did you not submit such a plan (as required by Minimum Standard EDb-401-02E(1)), Reverend Whisner."

"A. After reading somewhat carefully the minimum standards program, I felt sincerely that this would constitute an agreement on our part to abide by, or conform to the whole program here.

"It says here, 'to all' in number 6, all standards. I didn't feel in my heart as a matter of conscience that we could conform to all standards.

* * * * *

"Certain areas we felt we could not conform to."

Whisner sparked the annoyance of Prosecutor Fry by his frequent quotations from Scripture. Fry finally asked the court to require the witness to cite chapters and verses for the quoted pas-

sages. The court agreed, and Whisner, from there on, complied with evident enthusiasm. Other parents took the stand, some of the testimony - by its evident religious sincerity - bringing tears to faces in the packed courtroom.

The defense also brought out extensive testimony respecting education achievement at Tabernacle Christian. On the Stanford Achievement Test (national basic skills test) Tabernacle Christian School youngsters made scores showing that most of them had made two years' progress in one year while there were none who performed below par.

Two nationally renowned expert witnesses took the stand for the defense - Ralph O. West, of the New England Association of Independent Schools, and Dr. Donald A. Erickson, of the University of Chicago. West, an authority in the field of school evaluation, stated that he found the Minimum Standards unclear in important respects, said they could cause needless expense and hardship to private school administrators, and that, while they require a non-public school to state its philosophy, they go on to mandate a philosophy which is 100% that of the state.

Erickson, who has served as educational consultant to many state and federal governmental bodies and has authored a number of nationally recognized studies, attacked the Ohio Minimum Standards as in part "educationally indefensible", "obliterating any distinction between public and private education." He was sharply critical of the philosophy of the Standards:

"...I have no hesitation in identifying that philosophy as a secular humanist philosophy."

Erickson felt that the Minimum Standards represent "the weakest way to make schools better." Such standards, he said, have been used:

"...to prosecute parents who want to go the extra mile, do something extra for their students, but happen to do it in an unconventional way."

The court denied the defense motion for acquital and found the parents guilty.

The parents, on September 6, 1975, took an appeal to the Ohio Court of Appeals.

In July, 1976, the Ohio Supreme Court unanimously ruled that the parents could send their children to a non-public religious school, even though it did not conform to minimum standards set by the state.

Why Interfere with Parental Preferences in Education?

Dr. Donald A. Erickson

There's a danger in a conference as complex as this that we talk about all sort of interesting side issues and lose sight of what are the central questions. So I'm going to try to state them again, very, very simply. I do so in the light of my assigned topic which is: Duties vs. Limits of the State vs. Parents in the Education of Children. Or to put it another way, who really should have the right, the moral right, to overrule preferences of parents concerning the upbringing of their children? I think that's the most central issue confronting us. May I restate it? Who should have the moral right, or who does have the moral right, to overrule the preferences of parents concerning the upbringing of their children? Now I happen to think that until the answer to that question is found most of the other discussion is irrelevant and you cannot really assess the morality of government intervention in education without first answering that question. You may also notice the word morality in the question, rather than legality or political feasibility, because I believe, as I'm sure you do, that our laws are often immoral and majorities are often wrong, especially as far as their behavior toward minorities is concerned. It happens to be one of the basic premises of our legal system that some things are too important to be determined by minority rights or by majority action, but should be protected by such devices as constitutional safeguards and rulings of courts that are beyong political reach.

Experience has shown, as a matter of fact, that even these constitutional safeguards and court decisions turn out, in retrospect from time to time, to be wrong or to be grossly unethical. So in the final analysis the justice of our society depends on a continuing debate. We must ask and re-ask the question: what is moral? Now since all conceptions of what is moral are based upon some kind of stated or unstated assumptions concerning basic values, I'd like to state my assumptions. I think sometimes values are best elucidated by means of illustrations, so let me give you some first hand experiences. I heard Rev. Levi Whisner last night and was taken back to a courtroom in my memories. I remember the tears he talked about, and they were not at all maudlin. Those people were under prosecution, and they knew they would probably lose, at least at the lower courts. As I saw the anxiety in that courtroom I said to myself "Why? What compelling reason causes educational officials to do this to people?" As far as I could see, one of the distinguishing features

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of those people was that they cared too much about the education of their children. They just didn't let them go to any old school. Now whether you agree with Whisner or not, he and his people really cared. I thought then about the example of Leroy Garber, and I remembered the day in December, I believe it was the day before Christmas, when I sat in a rented car in front of his deserted farm outside Hutchinson, Kansas, and the Kansas wind blew and a couple of cats wandered around asking what was wrong and here was this neatly manicured farm deserted by an Amishman because he had been literally hounded out of the state. I learned later that he went to the State of Ohio where he thought there would be more religious liberty and discovered that the meager amount he'd gotten out of his Kansas farm would not buy him another farm. So the last I heard of Leroy Garber he was still working as a carpenter, hoping some day that again he would have a farm. That happened because he was prosecuted, allegedly because his child was not being educated as a Kansas law required, even though Sharon Garber had taken every course required by law. She'd taken them in the wrong place and in the wrong way. She did it by correspondence; she passed at a percentage grade of something like 97.14; she was employed; she was self-sufficient; she was all the things that we expect adults to be, but she hadn't been educated at the right place, at the right time, so Leroy Garber was hounded out of the state. I had talked with Leroy Garber and with his wife and with Sharon, and again I asked myself the question, "In God's name, what compelling reason causes us to do this to people?"

I thought about Jonas Borntreger and his group of Amishmen over in Iowa. I investigated that situation, again, and learned about several horrible instances. The state authorities, after fining the parents daily and confiscating some of their property and becoming very embarrassed by the public reaction, decided that the smooth way to do it was to go out with the school buses and kidnap the children from their school - just lift them bodily into the buses and take them into the public school. You can do this because the Amish are pacifists. When the parents heard that this was going to happen, they surrounded the school building. The sheriff and his deputies and the county superintendent of schools and the local superintendent of schools simply pushed their way through the fathers, past the sobbing, hysterical mothers into the classroom, where the children were desperately frightened. The teachers circled the rooms in agitation singing "Jesus Loves Me," the children joined in, the newspapermen came in, the flashbulbs popped and tides of emotion swept the room. The children fled through the cornfields with the sheriff, with his gun on his hip, in pursuit, and you can't tell me that there weren't permanent psychological scars from experiences like that.

I could go on. I could tell you of all kinds of instances when the state decides that it is a Super Parent and responsible for the education of children. Now I have a purpose in telling you these incidents. I'm trying to draw some assertions out of them. I'd like to assert that in our society as a general rule you cause immeasurable anguish to parents and probably do serious damage to children when you cause young people to violate their parents' most profound convictions of right and wrong. Secondly, and this fits in with one of Ralph Tyler's statements yesterday, you weaken the most powerful of all educative influences when you neglect the influence of the family on the child. And thirdly, you significantly diminish the chances that the child's interest will be protected when you shift control of his destiny from somebody who cares deeply to someone who cares signifi-

cantly less, especially in a situation fraught with conflicts of interest. Now obviously when I talk about somebody who cares deeply, I'm talking about the parents, and I hope it won't embarrass you when I tell you that when I talk about somebody who cares significantly less, I'm talking about representatives of the state. Now allow me to interject very arbitrarily a fourth asertion. It's not particularly pertinent to those illustrations with which I began, but it is important. It is that the pursuit of truth and the protection of our must basic liberties is seriously endangered when government is allowed to decide what philosophies and lifestyles should be promoted in the schools that most or many of its future citizens must attend. An untrammeled marketplace of ideas is vastly preferable.

Well, what I'm leading up to is my general criterion of moral state intervention in education, and I think all state controls in public and non-public schools should be judged by this criterion. When we must choose between parental control of the child's destiny and governmental control of the child's destiny, we should strongly prefer the former. When you have to choose between parental control and state control, I don't have any problem personally. Now I'm talking about parents generally of course, and not about exceptions. Government should overrule parents' wishes concerning a child's rearing only when there is a compelling powerful reason for doing so. To clarity that point through analogy, I think the state has a right to require a blood transfusion for a child, even in violation of parent's religious convictions, when there's strong evidence that it will make a difference between the life and death of the child. That's the type of thing I consider to be a compelling reason. I think most of you would also.

So in this sense my answer to the question of the Conference "Whose child is this?" is: The child is the parents', although in some respects I'm really reluctant to regard the child as belonging to the parent, but in this limited sense that's how I answer the question. I do not mean to imply, as I should have already made clear, that there are no limits on what parents may do to and for their children. Now if you feel in a moral position to regard the child as belonging more fundamentally to the state, that's not where you will come out, and you might want to read Plato's Republic. One could easily argue on this basis that the state may have no business running any schools at all, since it is becoming more and more clear that every school is value laden and that in the very act of running schools the state is prompting some philosophy and lifestyle. That's a possibility argued very provocatively in a recent article by Stephen Arons. For the present purposes, things are complicated enough, so let's limit ourselves to regulation of private instruction in homes and in private schools. The principle that I want to apply, as I mentioned earlier, is simply that the state should overrule the child rearing preferences of the parents only when it has a powerful reason for doing so.

I have been unable, and I've done a lot of looking, to find any compelling justification for the prevailing mode of state regulation of private schools. There may be one; I just haven't been able to find it. That prevailing mode is not well exemplified in Illinois, fortunately, where regulation of private schools is still virtually nonexistent. But as you look at the laws across the country, and I've done so on numerous occasions, the prevailing tendency is to say, when the state begins to regulate, "It it doesn't look like public instruction, it's not acceptable

for compulsory attendance purposes." And that's taken so far as to say that if a child is educated at home, it doesn't matter how much you can demonstrate that he has learned, that's not acceptable, because the home is not a classroom. In the language of the Kansas Supreme Court in the Garber case, a school is a place where students learn together under the direction of the teacher in a place called a classroom for five hours a day, 180 days in the year.

Now when you're looking for a compelling reason for state regulation of schooling as I have done, when you're looking for that compelling reason, what sort of thing do you look for? What would you consider to be an adequate reason for state intervention in the preferences of parents concerning the child rearing of their children? Well, if I could find evidence that most parents were irresponsible or made bad choices, at least in comparison with the choices of the state's agents such as professional educators, that would be a fairly decent reason for some intervention. And there is some evidence to that point. E. G. West in his study in Great Britain and New York has demonstrated that in the days before compulsory attendance and state supported education, literacy was surprinsingly widespread, and parents were, at least in light of the conventional wisdom of today, surprisingly conscientious in educating their children. Karlis made the same observation concerning the antebellum South where black people were not only not required to go to school but were required not to be educated, yet managed to insure that a surprising proportion of their people became literate, and ran some very good sub-rosa schools. I think of my own interviews with very primitive Navajo people. I find them very touching because of the extent to which those parents were determined to get their children a decent education. As a matter of fact, from my point of view, they were making better decisions regarding their children than were being made by the white administrator on the Navajo reservation or by the professional educators. I also take the decision by many urban blacks in big cities today to attend Catholic schools to be fairly logical decisions.

Just in passing, there is also some evidence concerning the choices of educators, a lot of evidence that these choices are largely intuitive, rather than scientific, heavily laced with self-interest and conventionality and far from impressive as far as predictably good results are concerned. I include myself in that group. I would find it a good compelling reason for state intervention if one could demonstrate that parents made bad decisions and agents of the state make much better decisions. I think one of the most salutary things we can do in education, as a matter of fact, is to acquaint state officials and the general public with how little we know about the educational process and how limited are the assertions that we can make on the basis of scientific evidence. They are extremely limited. One of the most embsrrassing evenings I have ever spent was an evening with a roomful of experts in various fields of education when somebody raised the questions, what do we know for sure? I also take it as fairly compelling evidence for intervention, limited intervention and not intervention of the type we have today, if we could decide what attitudes and skills are clearly essential to good citizenship and therefore to be required of all children and if we could determine when these skills must be developed in the child. Is it necessary to teach mathematics in the fourth grade or is it true, as some researchers seem to have demonstrated, that you could forget about it until adolescence and people will almost immediately catch up?

I note in passing that if you look at the literature you'll find almost no agreement among the people who have thought most deeply and systematically about the problem. State officials who act as if they know, must have some source of wisdom that I haven't been able to find. I should also note that the evidence has a habit of contradicting the conventional wisdom on this point. The Amish are a good example; their secondary education lacks many of the features that are purportedly essential to functioning in the modern world, but if you can find an unemployed Amishman, I haven't been able to find one.

Also notice, it we could specify what skills and attitudes and understandings are essential to good citizenship, that doesn't justify process control. It doesn't justify saying, "You must have a certified teacher!" It doesn't justify specifying the hours of instruction, it doesn't justify specifying textbooks, class sizes, libraries or any of the other things that the conventional wisdom tells us are so essential to the process. All it justifies is product control. As somebody said just yesterday, "If you know what our kids ought to learn why don't you just find out whether they've learned it or not." That's rather simple minded but I think rather direct, and gets us out of a lot of nonsense that goes under the heading of minimum standards. Another possible compelling reason for state intervention would be evidence that some forms of instruction are a clear and present danger to the general weal and will lead to the destruction of society. I worked with some state legislators who become alarmed about some schools. They discover a Black Muslim school in Chicago, for example, and they envisioned a revolution starting next week. They wondered what kinds of safeguards to institute. I've had a few students do case studies of Black Muslim schools. As far as I can see, they do virtually the opposite of what the legislators think they're doing. Again it's salutary to remember how little we know in education.

Now more questionable, but nevertheless a considerable reason for state intervention, would be that some forms of instruction are more productive of self-determination than others. If you send a child to a public school, some people allege, he's more likely to get a wide range of alternatives laid out before him cafeteria style, and he's more likely to choose for himself what kind of lifestyle, what kind of occupation, what kind of philosophy he's going to adopt. But who's going to decide which schools are better contributors to the social and political order, to refer to one of Robert Hutchin's arguments? As in the case of book censorship, who's wise enough to be trusted to decide this for all of us? And here again we encounter some notable surprises. I keep running into people from Amish communities who went to public schools and who could never again fit into their societies. There are some really nifty, complex problems involved there.

As a matter of fact, one may create a strong argument against the kind of regulation that minimuzes the distinguishing features of private schools. One is that without room for diversity, schools all look alike, and we are enormously handicapped in our efforts to advance our knowledge of fundamental educational processes. As is well known from the famous Coleman study and many other massive studies in education, one of the most serious problems is that schools are so astonishingly similar. We can't find out what would happen if you did something different. Since we don't really know what a good school looks like, and on the basis of research, we really do not know, <u>why</u>, why don't we let them be different for a while and

study them and see what are the consequences of the differences?

Just to give a concrete example, we're now doing a comparison in Canada of a fascinating situation in which in some provinces Catholic schools are fully supported by the province at the same level as public schools. In other provinces of Canada right next door, culturally similar because of constitutional accidents, Catholic schools get no support at all. Now that's a fascinating laboratory, and it enabled us to get some evidence of what could be the consequence of public support. I don't want to tell you too much about that, because we haven't analyzed our evidence too thoroughly yet, but I just can't resist telling you that the overwhelming majority of the teachers and parents with whom we talked think the non-supported schools are better than the supported schools. They think that when teachers are paid higher salaries their dedication goes down. (But don't tell anybody I said that!) The people in the study seemed to feel that one of the secrets of the non-supported Catholic schools is their fragility. Everybody knows the enterprise could be lost; it's teetering on the brink of insolvency, and everybody feels, "My contribution is important." When we get public funding, the teachers feel, "Well, I'm replaceable. They can hire somebody else. They just go hire themselves another body. No problem. I'm not needed." It's very akin to the concept that many of you know about in the work of Barker and Gump - undermanned settings. The people feel their contributions are vital to the enterprise and I think that's part of the secret of the kind of parental support that you get in most private schools in this country.

Well, I've said that without diversity to study we're handicapped in our efforts to advance our knowledge of fundamental educational processes, so the more you have state controls requiring private schools to be like public schools, the less we're going to learn through research. Secondly, without diveristy most schools will never experiment with anything fundamentally different because the research on this topic indicates that true innovators are very few and far between. Most schools look around for the ideas, and when they see them happening somewhere else, they'll try it. If we want to improve our educational process I think we may need to try something a little different from the conventional mold. Well, I hope I have elucidated what I considered to be the central issues.

A Case for Choice

Dr. John E. Coons and Stephen D. Sugarman

The following article is not the text of the speech that Jack Coons gave at the conference, but is an article that he subsequently published which covers all the issues and topics which he addressed when he spoke at the conference, "Whose Child is This?"

William D. Geer and Mary Nelson
Editors

Educational controls: government, school personnel, parents, professional lobbies. Freedom of choice: the family obligation; family/child interactions. Present teacher responsibility and free teacher/parent cooperation. Public consensus regarding a child's interests. Variety as a social strength. Racial integration and choice. Elements of free choice: financing, enrollment aspects, teaching contracts, input/output minima. The advantages of free choice.

INTRODUCTION: ON MAKING CASES

Every argument for reform of policy assumes an audience that to some degree shares the advocate's social objectives. It is idle to argue for the eighteen-year-old vote with those preferring a return to monarcy. In arguing for choice in education we run the same risk. Our aims are two. First, education should serve the best interest of the individual child. Second, it should support community in its many aspects; here we will emphasise two of primary importance - public consensus and racial integration. The argument is addressed to readers with similar objectives.

Policy argument also needs two or more alternatives that can be compared for their relative capacity to produce the desired ends. It would be pointless to label the present educational regime good or bad in the absolute. We will, therefore, describe the existing system and, for comparison, a hypothetical system which would increase the authority of families. The descriptions for the moment will be very general; alternative systems of choice will be detailed at the end of the chapter.

THE LEARNING CONNECTION: TWO MODELS

Power over the education of the individual child is currently divided among six forces. There are government institions; teachers and other school personnel; families of public school pupils; private school families; lobbying professional groups; and a miscellany composed of taxpayers, nonparents, and others we can call the "rest of us." The same individual may appear in a number of these roles.

Government (principally state government), within the limits of state and federal constitutions, creates and empowers school districts. It ordains tax structures that support them and the general rules by which their operations

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are governed. Districts set the bulk of curriculum policy, establish enrollment rules that determine which school the child attends, and hire the teachers who are assigned there. These processes of decision are abstract and rational. Government does not know individual children.

School personnel, especially teachers, have discretion within broad curricular constraints to affect the child's experience, since the children who are assigned to them are virtually their captive audience for several hours each day. The relation is sometimes fairly personalized though a class of twenty-five is too large for close involvement of the teacher with more than a few students.

Public school families typically have little influence on their child's formal education. Sophisticated parents with time and interest are partial exception, but their options are usually limited to whatever variety is available within the assigned school or, at most, the school district. In some cases families discover what they want in other geographic areas and make the sacrifice of moving their residence to obtain it.

Under our national constitution families with money cannot be forced into public schools. Thus those selecting private schools - the well-to-do and those with private subsidies (e.g. parochial school families) - determine more of the basic character of their own children's education.

Professional and commercial organizations affect the individual child by inducing government to employ their members to do things to children that are said to be good for them or society. Thus, construction companies persuade legislatures to require schools to be rebuilt for the purpose of protecting children from earthquakes. Teachers unions obtain laws which limit class size to thirty, and other laws which exclude teachers who lack particular academic credentials.

The "rest of us" vote on taxes and occasionally are aroused by the alarums of special interest groups. The politics of education, however, are dominated by the professionals. This is largely because the class of persons which is the target of education - children - is incapable of representing itself politically. Nor can parents represent children for two reasons. First, individual children's needs and interests are very different from one another. Second, even among those with similar interests it is unlikely that individual families will spend precious time and funds for lobbying. Political scientists and economists call this the "free rider" problem (Olson 1965; Buchanan and Tullock 1962). If others lobby, one does not need to; if others don't one's own contribution is inconsequential. Under the law, parents cannot coerce the participation of others. Hence they find private uses for their extra money, and the political process is dominated by those organized interests who wish to see services and in whose interest it is that children remain in need of such services.

Imagine now that this pattern of power over the individual child were altered by providing for each child a full state scholarship plus admission and transport to the school of the family's choice - public or private. There would be several broad effects. School assignments would cease to be orders issued to abstract classes of persons of certain ages and location. They would become personalized decisions about Freddie and Julia, tailored choices that now could be made by the family without having to change its residence.

The power of local authorities to command an audience would terminate;

they would, however, retain their right to advise families, to run schools, and to teach those who chose their services. The roles of state government, professional lobbyists, and the general populace would not be limited to the setting and enforcing of guarantees that all schools provide a certain minimum experience or that children achieve a minimum level of competence.

How would a system so dependent upon the family for making assignments and setting minimum standards compare to the present regime in its likely impact upon the interest of the child and of society? By family here we shall mean any adult-child relation, genetic or otherwise, which is expected to be permanent, continuous, and intimate at least until the child reaches adulthood.

CHOICE AND THE BEST INTEREST OF THE CHILD

Given the child's interest as our primary concern, and given great differences in the needs and interests of children, we will further assume in this section that the function of society is to choose and empower someone who will make school assignments for the individual child. We suggest three qualities in the ideal chooser. First, he would incorporate the child's own voice in the process; he would thus stand as proxy for the child's own perception of his needs and interests. Second, the ideal chooser would care for the child in the special sense that the child's interest came ahead of his own. Third, the chooser's welfare would be linked as closely as possible to that of the child; he would be responsible for unwise choices in the full sense that they affect the chooser himself adversely. These qualities of voice, caring, and responsibility can be summarized as effective knowledge. How shall we grade the family on this basic standard?

Voice can count within the family in two interrelated ways. First, the child may achieve his own choice. The family normally is a regime flexible enough to give his growing competence increasing scope while yet providing basic protection; the federally sponsored "voucher" experiment in Alum Rock has shown how often the child himself effectively makes the school selection. Second, the family environment encourages the confidentiality and privacy that can be crucial to a child's willingness to reveal his feelings. Moreover, since the parent-child unit is small, enduring and repetitious, the child's opinions are communicated through nonverbal behavior; the intimacy of the family fosters an effective private language.

Caring is the family function par excellence both in myth and reality; and the reality is importantly enhanced by modern contraceptive culture (Coons 1976b). Adults now must choose to have children, and they must do so in spite of the economic and personal penalty exacted of parents in modern life. Such self-imposed burdens seem to us a convincing measure of devotion.

Responsibility is a primary characteristic of the family, because its happiness is a function of the child's own. The relation imposes the pains of the child vicariously and even directly upon the group, and it will continue to do so throughout life. It is in the objective self-interest of the adults in the family to help the child achieve satisfaction and autonomy.

The sum of the family's qualities is a substantial effective knowledge. It is fallible and varies by families; given broader authority, some families would make grievous errors in educational placement, as perhaps occurs now among private school families. Would

those now bound to attend public school - the non-rich - be less competent? If so, in what degree? The question seems unanswerable without experiment, since these families hitherto have lacked choice. In any case they might grow through the new experience of responsibility. Most people do.

How does the present regime in public education compare for effective knowledge of the individual child? First, the basic system of matching the child to his school experience - neighborhood assignment - is almost wholly abstract, school selection for the child is made by government in total ignorance of the child's wishes or special qualities (unless he is so incapacitated as to be outside the regular system). At the school level, students and teachers are generally assigned to one another in an impersonal process. Individualization that occasionally does occur in teacher-student pairing is necessarily limited - there are only so many third-grade or geometry teachers - and below high school the child's voice is rarely involved.

Once the child is assigned to a classroom he may achieve some voice. The teacher's ability to hear him is a function of the hours they spend together, the number of students in the class, the child's aggressiveness, and character of his classmates. When heard, the child's desires can receive but limited accommodation. And in reality no child can expect to be heard very clearly unless he is willing to become a deviant, in which case a counselor may spend several hours with him. Were each child to receive substantial time from a psychiatrist, the advantage would be plausible; but experience and social science confirm how little the professional counselor is able to learn and to achieve in the average case beyond relabeling the child. In any event the counselor has few alternative environments to which the child may be sent.

As for caring, most teachers surely do, but their caring by its nature must remain relatively cool and abstract. The teacher who becomes very deeply involved with even one child is likely to be regarded more as neurotic than professional. To the extent that he does so, he is plainly substituting for the parent. It is not a model role for a system of education. This is not a criticism, nor would the degree of affective care by teachers increase under a system of choice. The point is that under the present system, for the child of the non-rich family, there is no caring adult who is able to exercise authority over assignment. In our view it is a proper function of the state to provide a competent professional backstop for the occasional child whose parents do not care; but it is not proper to screen out and frustrate the natural care of most parents.

How fares the present system as a focus of responsibility for the individual child's welfare? We cannot here detail the reward system for public educational agents, but two points are plain. First, the systems for purging the classroom of incompetents is of little consequence; virtually no tenured teachers are seriously threatened so long as they show up for work and keep their hands off the children. Second, under the present structure the teacher has no strong natural link of self-interest with the child. He may regret the academic or personal failure of Freddie, but he neither must live with nor even encounter him after June. Freddie is a crisis to be passed, not a cross to be borne - just another forgettable kid. And that is as it should be. Teaching is not parenthood and should not be held accountable in the same manner. It should be responsible only for the reasonable performance of a narrower role. Yet even this will elude us until society supports the child's capacity to transfer to another educator.

It has been convenient to this point to inquire simply whether bureaucracy or the family is by itself the superior decisionmaker. Now we should see that this mistakes the real question, for it suggests too broad a conflict of parents and professionals. In a system emphasizing family choice, the fact is that professionals would be likely to play an important role. They have valuable information not available to many parents, and families would come to them for advice. If anything, this should make the professionals' involvement in assignments even more active; since families could reject their advice, professionals would have to depend upon persuasion. The relation would become that of lawyer to client or architect to owner. For the first time public school teaching might become a true profession because its clientele at last was free. That very freedom could well improve the market for professional service. Once the system of expert advice became accountable, families could begin to trust it. It would now be strongly to the family's interest to learn how best to use the available experts - and to use them.

Note that by having the final word the empowered family need no longer fear professional oversight or nonfeasance. Today no one plays this role of backstop, and society knows the consequence both from sad experience and social science. The child once labeled and assigned by bureaucracy is rarely reassigned, however much he needs it. What family choice would give him is an amateur champion - a change agent - to ensure that he is not forgotten by the system. A family which found the professional unresponsive to inquiry could transfer the unhappy child themselves. Such an incentive could in turn have a vitalizing effect on the expert; choice could bring the teaching profession the dignity that has so long eluded it.

GETTING THE QUESTION STRAIGHT

Some would argue that we miss the point. We have compared the efficacy of two regimes for achieving the child's interest as if that interest were currently undefined. Some would argue, however, that it has already been defined by consensus. Our school officials are simply carrying out what the public has agreed is good for children; and the public has decided that non-rich children are best off under the present system. This criticism holds good for a certain minimum content of education. However, it fails as a general proposition, for above this narrow minimum the child's interest is a private affair, whether we like it or not.

To have a "public" meaning about the best interest of the individual child there must be a consensus supporting a defined substantive objective embodying the good for children; the consensus should also encompass a specific means to achieve the objective; and there should be a reasonable basis for believing that the means will indeed achieve those ends. At present there are elements of the child's interest (not restricted to education) which are in this sense "public." A consensus, for example, supports positive levels of nutrition and educational curriculum; and that consensus finds negative expression in proscriptions such as curfews and prohibitions upon dangerous labor. In short, there is social agreement concerning a reasonable specific minimum substantive good for children.

However, as in other aspects of his life, the typical child's formal education includes far more than the minimum. Beyond the minimum, it is individuals and subgroups - not the public - whose values and means express the child's welfare. There is no public consensus that the child should become aggressive, a

Muslim, a patriot, or a pacifist; these are as much in dissensus as the decision to teach phonics and employ ability grouping. In this immense area beyond consensus, the reality is that government as such has no views (Wolff 1968; Unger 1975; Stewart 1975, p. 1667); the question for government in these circumstances is not the child's interest at all, but rather whom it will authorize to define the interest in his own private terms. Within this domain of dissensus, the state may choose to enforce the decisions of welfare workers, parents, teachers, or family court judges, but in every case these are private judgments that it sanctions. This is in itself no criticism; someone will decide for children and, where it lacks consensus, the most democratic government has no option but to legitimate some microsovereignty, allowing it to set the values and means for children. This is, of course, what it has done for education; the school bureaucracy stands, to this extent, not as an implementer of what Americans agree is best, but as sovereign over the interest of the non-rich.

But what is the rationale for society's imposing upon a child it doesn't know the special views of a particular school board, principal, or teacher? Society does not do this to private school users; in justice and common sense, how can it do it to the rest? We know of no principal favoring subordination of low-income children to the peculiar preference of strangers, at least where the family's own choice remains within the range of values and practices legitimate for others. Fair respect for equality of treatment thus reinforces the conclusion of the prior section that beyond the minimum the family is the appropriate sovereign.

There is a final consideration. This is the new humility beginning to pervade the social science of children's welfare. It has in our time become apparent that in many areas the professions know very little of how to intervene successfully in children's lives (Mnookin 1975. p. 226; Coons 1976a). Under conditions of professional dissensus, giving families a broad discretion in education seems little more than common sense.

CHOICE AND SOCIAL GOALS

How would regulated family choice advance the social goals of community and racial integration? These questions are considered by others in this volume, and we will strip our own argument to its essentials.

Community

The social ideal expressed in the concept of community is subtle and somewhat paradoxical. On the one hand it suggests unity and, on the other, variety. This Delphic quality informs the fundamental political dogma - "one out of many." Does it imply that we are many struggling to overcome our differences; or is it, rather, our very differences that make us one? Is human variety a source of order or disorder?

While differences can be risky, we stand with variety as a principle of social strength. As with the genetic order, the least differentiated of human societies may be most vulnerable to environmental change. Variety, to us, is also a social good in itself. It is a source of esthetic fullfillment and intellectual growth. So long as variety remains intact in the distinct cultures and ideologies of our people, it offers

to every individual a choice of paths to personal fulfillment. It does so, that is, so long as the law of the society guarantees freedom from discrimination and protects the choice of persons to adopt the life-style they prefer.

When this condition of free choice is fulfilled, variety can also yield peace and cooperation among groups, bedrock social purposes which we share. Nothing conduces more to support of the larger than for minorities to perceive that their ways are trusted and even valued. Conversely, nothing may so fragment a society as a decision by the majority that minority values deserve nothing better than melting.

A society which trusts its minorities should implement their educational preferences, and family choice is the ideal mechanism for this, since it permits individuals to form educational communities of choice. It is far superior to the direct funding of existing schools, a device which encourages suppliers to fix and limit the forms and ideologies represented in the marketplace of ideas.

A pluralistic strategy in education would respond precisely to the fundamental change in the nature and function of communication since the advent of the melting pot. In a nation of widely scattered farmers and greenhorn immigrants it was at least plausible that coerced aggregation of the unwashed in a common school was a way of instilling the news that we are one people with inseparable destinies. In an age of mass communication the best news that could be leaked to the people is that we are not all slavish consumers of identical products and ideas. Schools of choice could provide this priceless function by giving life to minority ideals, ideas, and culture.

Even the angriest of ideologies can in the long run make its contribution to community. The child who is exposed to one-sided politics and religion at least has no doubt that there is a morality among humans and that morality is important. To see this is to take the first mental step toward brotherhood, a step that must be left unattempted in the neutralist morality of public institutions. Choice would, at its worst, spare us that most grievous sin against community - indifference. It might in the bargain give to minority children that sense of personal distinctness - of "identity" - that seems to underlie the psychology of tolerance. It is those who recognize themselves who are most ready to recognize others.

Racial Integration

If everyone were free to choose his school, what would be the consequence for racial mixing? The question will never be fully answerable. Absolute freedom to choose plainly is impossible to achieve, not only because of finite resources but because of conflicts in preferences; X cannot be free to associate with Y if Y is also to be free to refuse the association. We can, however, approach full freedom for the consumer of education by giving him his choice of school and the right to transfer if later he prefers another. To achieve this much we must in various ways limit the school's (and other patrons') freedom to exclude or discriminate against him. We are content to do so both because we are interested in the child as such (the school is instrumental), and because a rule of associational inclusion can offset the disadvantage of minorities. In a later section we will suggest details of such assignment and protection systems. For the moment we ask the reader to assume success in designing a mechanism that renders the selection process as racially neutral as the ingenuity of man can achieve.

Choice has shown a significantly

greater capacity to integrate schools than does a neighborhood system of assignment. It has been tried with varying degrees of sincerity and gusto in a fair number of American cities, several of which we know firsthand. Even many of the narrow and half-hearted programs have produced some increase in physical integration. For the most part, it is blacks who have chosen to attend majority white schools; but in some instances - for example, in Evanston, Illinois, and Redwood City, California - the traffic was heavy in both directions (McAdams 1974, p. 69).

To the extent that integration is voluntary it has several useful qualities. One, its stability is almost a matter of definition; people getting what they want by personal selection tend to stay. In addition, voluntary integration tends to become infectious. It begins with an adventurous few, but others follow. Still another advantage is the capacity of choice to forestall the residential emigration of white families who accept integration but prefer to avoid heavy black majorities.

Chosen integration would be incomplete integration. Very likely many families would choose to remain in uniracial - principally black - schools. Yet if this choice were truly voluntary we could not consider the outcome to be evil. There is nothing inferior or objectionable in a uniracial school; it would be Olympian arrogance to imagine that black schools could offer nothing in culture or ambience worth choosing.

It would also be political naivete to suppose that society has a more promising option for integration. Those who would escape compulsion as the hope of physical integration should study both the relevant social science (Orfield 1976; Wolff 1976; Armor, 1972, p. 90; Pettigrew, Useem, and Normand 1973; Farley 1976, p. 164) and the recent opinions of the Supreme Court (also Fiss 1975, p. 217; Bell 1975, p. 341). There is little prospect that the court will order the state to bus the suburban white student back to the city. Indeed, if it did so the exodus to private education could vaporize the very support for education upon which the urban poor must depend.

What hope is there then in a system of choice? A great deal, and now is the time. There is presently a marked surplus of places in suburban public schools which are principally white. There is space in private schools, urban and suburban, and more space and schools would appear if scholarships and transport were available. Perhaps children should be limited to transfers which have an integrating effect, but they should be given the full range of such schools in the metro area to choose from.

MECHANISMS

The administrative and fiscal devices needed for a system of choice can be conveniently considered in their relation to complementary purposes. First, a family's wealth should not affect its capacity to choose whatever is available within a system supported by public funds. Second, barriers to choice should be minimized; these include discrimination against certain types of children by educational suppliers, lack of information among poor families, difficulty in market entry for new schools, and similar impediments. Third, minimums of educational input and/or achievement must be established and supported by alternative forms of administrative control. Obviously the potential forms of intervention for these three general purposes are protean, and we must be content to give but a sense of the richness of fiscal and administrative options (Coons and Sugarman 1971).

Removing Wealth Barriers

Begin with the simplest forms of subsidy in which the family is not permitted to affect the amount. Suppose that each child is supplied a scholarship that is uniform in amount, except perhaps for adjustments representing higher costs of land, goods, and services in certain areas. Then simply add to this a proscription forbidding the charging of tuition beyond the scholarship amount; otherwise wealthier families will add on and income classes will separate themselves into schools of graduated cost; this is intolerable in a publicly financed system (Friedman 1962, pp. 85-107).

A variation of this model would graduate the value of educational grants according to the wealth of the family (Sizer and Whitten 1968, p. 58; Public Policy 1970). Thus schools enrolling large numbers of poor children would have more to spend. There is a certain logic in this if the poor tend to be more costly to educate. It is not easy, however, to focus the actual expenditure of the extra dollars upon the disadvantaged child unless he first be segregated, a practice which seems generally undesirable. The extra dollars could, of course, be directed to afterschool opportunities for the child such as private lessons in either academic studies, crafts, or other interests. The latter device is coming to be known as "school stamps" (Sugarman 1974, pp. 513, 546). It could go far toward closing the inevitable gap in the capacities of rich and poor families to provide extra-school opportunities.

If choice in the level of spending is desirable (as we believe), a system of "family power equalizing" may be adopted (Coons and Sugarman 1971). Here each school would charge what it pleased, but the family and the state would share the cost of the tuition. The family's portion of that tuition would increase with its income; a poor family would pay a very small percentage, the rich would pay full cost. The approachable ideal would be a payment formula by which a poor family realistically could "afford" as costly a school as a richer one. Thus family power equalizing lets the non-rich family especially interested in education spend at a higher rate if it is willing to make the extra sacrifice required.

There are other possibilities for financing. Open enrollment in the public system could be supplemented by subsidized private schools started by families. Families could be given credit on federal income tax, with poorer families who pay little or no tax receiving a positive grant for education. The current tax treatment of day-care expenditures is moving in that very direction. The combinations are endless.

Assuring Choice

Enrollment problems are substantial. Here let us start with the assumption that each participating public and private school will determine how many students to enroll, but will not control who is enrolled. For schools with applications equal to or fewer than its enrollment capacity, all would be admitted. For schools in which applications exceed spaces, some random selection method would be employed. A state agency could run the lotteries for admission.

There is a hard policy decision that must precede such a mechanism. Schools wishing to specialize in various ways - ecology, college prep, the arts, dance - seem highly desirable; yet to the extent their students lack the relevant talent, they are affected in their capacity to specialize. For this reason, some supporters of family choice would permit schools to select at least a cadre of

their enrollees. Others think it enough that the school can counsel the family against enrolling an untalented child.

It is also necessary to decide whether the selection rule ought to be tilted toward racial integration in order to offset the inertia of history, housing patterns, distance, and habit. It would be our own preference to do so, and we would suggest the wisdom of a regulation of the following sort.

> In cases in which a school has more applicants than places, the (state official)...shall first select at random from each racial group which constitutes a minority of the school's applicants a number of students not to exceed fifteen per cent of available places. All applicants not selected in this process shall then be pooled and the remaining places filled by random selection from that pool.

Many variations on this rule can be imagined. It would also be possible to give dollar rewards to schools which successfully integrate. This would stimulate the school to recruit in a manner which produces an integrated pool of applications.

This suggests the importance of an information system which is designed not for the literate and sophisticated but for those who may be used to getting their information by the grapevine. Families must know what kinds of schools exist, and schools that are presently popular may not be motivated to advertise in all neighborhoods. Direct counseling services will be necessary, as well as a right to visit participating schools under certain conditions. It will also be important that the family have access to independent professional counsel concerning the needs and talents of their children. A yearly stipend for this purpose would be ideal both in terms of assisting family choice and in building an independent counseling profession.

Having chosen and been admitted to his first, second, or third choice, how will the child get there? Plainly a system of no-cost transport would be vital. And having arrived, there must be assurance that the school which may not have been eager to have him does not de-select him by discriminatory treatment. In short, we would need a system of due process of the sort already abuilding in the public schools. For the child who is incorrigible or manifestly incapable of benefitting from the school of his choice, a fair system of separation would be necessary. The hope is that it would limit the school's power to behave arbitrarily without destroying efficiency.

To make certain there are new schools to choose from, the state may wish to assist entry by guaranteed building loans and similar devices. Entry costs in the educational business can be kept very low, but it would be well to offset some of the advantage of the public and private institutions already in place. It is also fundamental that public schools - like the rest - be left dependent upon their capacity to attract students. Probably most families would continue in public schools. However, it would be self-defeating for the state to pour in extra money to shore up a school no one wants. A process of dissolution equivalent to bankruptcy should phase out unsuccessful public schools; at the same time, new public entries should be possible, but should be governed by estimates of their ability to survive. This orderly closing of public schools that families shun, and opening of those they prefer, would magnify the importance of even marginal change; if no-

thing else, existing schools could read the signs and reform.

Public school fatalities suggest the problem of teacher security. If each school rests on its own bottom, the present district and state seniority, transfer, and security systems for public teachers will be replaced in part at least by contracts with individual schools. There are various ways to protect existing staff by "grandfather" provisions without leaving the schools crippled. Teachers may be willing to exchange some of their present perquisite for the prospect of an open and exciting system in which energy and creativity enjoyed some elbowroom. There are risks for teachers, but there are invitations to professionalism that will appeal to many.

Assuring the Minimum

The minimum in education - the public consensus respecting values and means - is today expressed in term of "input"; that is, there are objective experiences required for students. These typically include total hours and days of instruction, coverage of particular subjects, a teacher who has received a degree in education, and instruction in a building of a certain sort. In some states a child may be taught in his own home, but often this is only if the teacher is certified (Sugarman and Kirp 1975, pp. 144, 200, 208-10).

A choice system could inclue a minimum and might include many of these same input rules. Their observance could be required of any participating institution. We would hope that the teacher certification requirement which has seldom been applied to private schools would be dropped altogether. And a relaxation of parts of the building codes which principally benefit the construction companies would be sensible; likewise we conclude that instruction should be permitted in all sorts of basically safe environments, including private homes. But education in the agreed basics for, say, 175 days a year could well remain compulsory. So long as flexibly schedules and environments were accommodated, the bulk of present requirements could survive in a choice system. That is not to say that it should.

One broad alternative is to move toward output minimums - that is, to standards based upon the actual development of the individual child. One model is the neglect laws by which children are removed from families; if the child falls below a certain standard of educational achievement the family would lose its authority to direct his placement in formal education. There are several variations on the input/output theme. The state could view input as sufficient; families would retain choice so long as they met an input minimum, regardless of output. Another would view input merely as necessary; families would lose choice unless the child met both the input and the achievement standard. Still another variation would disregard the character of the educational experience so long as the output were sufficient.

What devices would be used to establis output criteria? No doubt tests, interviews, and observation would be suggested. One difficult question is whether to establish a uniform minimum or to vary it according to some prediction of how the individual child "ought" to be doing given his natural gifts as measured by the professionals. Allowing families to offer their own objectives and programs for approval by an independent inspectorate seems an appealing part of any package.

Whatever form of output minimum were adopted we would expect systems of choice to increase the percentage of children

who achieve it. Among today's population of habitual truants and dropouts alone there must be many who would today be in formal education had they not been driven from pursuit of the minimum by assignment to a school experience they could not accept. Given their choice of schools they might still have dropped out or failed, but if any at all were saved it would amount to a net gain.

Those who have not yet dropped out but are merely failing could also benefit. Once freed to seek another educational environment, at least some families of children now failing in compulsory assignments would look for a solution. Of course there is a risk that those now succeeding under coercion would be corrupted by choice. We would be willing to see that possibility tested.

CONCLUSION

Many assert that choice can never come, that the political impediments are structural and beyond redemption. This may be, but our present observation is that the old structure of educational finance and governance is quaking. The forces are not merely a pupular discontent, though that is real. In some states, including California, there is an opening of the political process by constitutional fiat. The legislative renaissance provoked by Serrano v. Priest is the first since the imposition of public compulsion a century ago. It is impossible to predict its outcome, but there are signs that those who prefer choice, including minorities, will have a voice in the final solution. It could include substantial experiments with choice as a part of the Serrano package.

Some warn us that choice, if it does come, will cause disorder and cultural discontinuity - that it will bring too much change. Others fear the opposite: that essential change is beyond the power of social mechanisms and that choice would bring little more than marginal variations on the present themes. Pessimism, it seems, can make the most of anything. We have already answered the fear of social disruption. In concluding, we would answer the alternative fear of inadequate change by suggesting that marginal differences in observable behavior can count in a deep and powerful manner. A large measure of institutional continuity is exactly what one would expect; the race is not programmed for anarchy. Nevertheless freedom to select one's own way could have profound psychological significance, even if only the few employ it to alter their external experience in substantial respects. To choose what has previously been compelled is choosing nonetheless. Perhaps the difference is only a matter of human dignity and our view of one another. To us that seems enough.

The State's Interest in the Child

Dr. Joseph M. Cronin

I assure you the State Board of Education is very very interested in this topic of the relationship between the state and non-public schools. I think it is important for you to know at the outset that I am the parent of children attending non-public schools in Springfield. I have three in non-public schools and three in public schools.

The topic for your conference is that of parental roles in education, but you are exploring, I think wisely and appropriately, the relationship with state government to find out what kind of relationships there are. I want to deliberately try to complicate the issues and suggest the great number of kinds of relationships we can have on the one hand, and persuade you how sensible we will be in terms of responding to the different needs of different kinds of private or parochial or independent schools. First, some sort of basic recent history.

The 1970 Constitutional Convention in Illinois made major changes in the way the state makes educational decisions and policy. First of all, the position of the Superintendent of Public Instruction was abolished. The new State Board of Education was now to consist of seventeen citizens appointed for long terms, six years, by the Governor and it was up to them to select a State Superintendent of Education. You will notice the change in terminology. The members of the State Board were to be selected by judicial districts which guaranteed geographic representation. Both governors have respected the need for diversity on that State Board. They selected both men and women, both white and black, Catholic, Protestant and Jew, Hispanic and Anglo. So it is a very diverse board right now and when you have seventeen persons, obviously it is going to be much more representative than if there were one elected official. You will be interested to know that the Chairman of the State Board of Education is the parent of two daughters who attend non-public schools here in Chicago and several other members of the board have children in non-public schools. Others have children in public schools. But that diversity is represented on the State Board itself.

A third bit of background. The State Board of Education under Illinois law regulates and sets standards for public schools, and there are some two-hundred pages of law which limit, constrain, and guide the State Board on how they do that in terms of public schools. But when it comes to non-public schools, there is but one sentence in that section of the statute which created the State Board of Education concerning non-public schools. It is the one saying that the Board has a responsibility to develop policy guidelines for public and non-public schools. What does that mean,

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policy and guidelines? Are you going to make policy for my particular school? No, that isn't how we interpret it. Policy is a general statement about what ought to be and refers to state level policy. Let me give some examples. Policy, so far, for the State Board of Education means that non-public schools ought to be recognized on a voluntary basis, meaning that if a school chooses to meet the particular standards set on the whole for public schools, then it is a prerogative of those schools to seek that kind of evaluation and recognition, not on a compulsory basis but on a voluntary basis.

Secondly, there are discussions about non-public schools registering with the state, in other words, acknowledging their existence and giving us a minimal statement of information, for example, the number of teachers, the number of students served, some sort of basic information like that. Another example of policy statement would be that non-public schools should be entitled to whatever services and aid from the state that they desire as long as it meets constitutional guidelines, federal and state.

Guidelines are specific suggestions about how schools are operated. But guidelines do not have the force of the law. They are not the same as regulations. At the state level when the legislature says here is what we intend to do and the State Board should promulgate regulations with the Secretary of State, which have the force of law. Guidelines lack the force of law.

It is important for all present to recognize that the State Board and staff make a distinction between religious schools and those independent schools that are set up to make a profit. We have for example about three hundred private schools in Illinois who are in business to make money and to prepare people for careers or trades. We have schools of cosmetology, we have truck driving schools, and we even have a school for auctioneering which only meets two weeks during the year. Many of them, of course, are in the business of training secretaries and clerks for the world of commerce.

There are some important distinctions between private schools. We are mindful of the constitutional guarantees concerning the free exercise of religion. In the case of those schools which are church affiliated we wisely avoid specification of curriculum or textbooks or the qualification of teachers. Again I draw that distinction. For private and business vocational schools, however, we have a fairly elaborate rule book that regulates how they advertise so that the consumers are protected, how and when they assess tuition. We stipulate how the salesmen for these schools are to be licensed - some are correspondence schools, some of these are full time schools - we regulate the refund policy, the financial disclosures of these schools. So there are very genuine and major differences among private schools and it is important that all of us acknowledge these differences.

There is a third category of school and that is the private special education facilities. These are schools which actively seek and are entitled to, under federal law and state law, funds for providing programs for handicapped children. We also have about a fifteen page rulebook on what the state and federal government will pay for, on what qualifications the staff should have, on what records should be kept and on standards for physical facilities.

Now there is a fourth category of private education that we regulate. This may be a surprise that the state board of elementary and secondary education does it. But that is degree programs in private higher education. If a college

or university, let me use as an example Illinois Wesleyan, wanted to add a doctoral degree program, a master's degree or baccalaureate, they are supposed to petition the State Board of Education for approval of that. Also traditionally the State Teacher's Certification Board which is under the State Board of Education must approve new programs that lead to certification. Even the University of Chicago came in about a year ago with a new pre-school program and wanted to have a State Teachers' Certification Board approve that program. So there is involvement in private higher education as well as in private schools. So under different circumstances we have vastly different responses to different categories of private schools.

What do I perceive that private and parochial schools want from state government? I think most schools fall in one of these three categories: Category 1 is "we want no state money at all, no federal money and no entanglements. We want freedom. Please stay out of our schools. Maybe we will register with you so you will know we exist, but that is about all."

Category 2 is "our school would like the state to help finance the services to parents, such as the lunch program. We would like to be part of the federal and state program, maybe serving breakfast as well. Transportation - we would like the same service there that the public school students have. We would like to have free textbooks for our students, and also we would like for our students to have access to vocational education and to special education and guidance and personnel services." Rather than have State of Illinois jump right in to all these services, the response actually has been rather slow and cautious, probably because of the experience with the Parochaid when that was found to be unconstitutional. In the lunch and breakfast programs, interestingly enough, there are several million dollars going to parochial and private schools but work in a way that is essentially non-controversial. The only thing controversial about lunch programs has been the plate waste issue. The federal government has handled that, I guess, by saying they will cut down the portions for the little kids. Apparently the portions were all determined by how much a twelve year old could eat and the seven and eight year olds couldn't eat that much. So that big issue is being dealt with right now. But it is nothing to do with public or private.

The issue of transportation is much more cautious and guarded. Right now the law is fairly strict saying that the public school can provide the transportation providing the bus route is the same. That isn't always the most convenient way of doing it and we are looking at some possible changes. Sometimes it is actually more expensive for both the public school and more time consuming for the children to go on a bus route that isn't the shortest distance.

Free textbooks. Although the legislature appropriated almost twenty million dollars a few years ago, the Governor sensing that there might be a court case reduced it to $10,000 which was just supposed to be enough to get some group to come in and test it. The State Board of Education and I don't go looking for litigation as a general rule usually. But in this instance we sent out a press release saying that we expected a case. Nothing happened. So about eight or ten weeks later we called up a couple of groups that usually sue and said do you plan to sue? And they said, "No, that the Illinois law was carefully drafted in this instance and appeared to be virtually the same as the Pennsylvania law which was found to be in compliance with the U. S. Constitution and unless we really erred in drafting our regulations and allowed people to buy religious textbooks

or materials that they did not plan to sue." Well, that meant that the next year the appropriation was $3.5 million and in this fiscal year it is five million dollars. Now we have projected that the full cost, if we would provide one textbook per year for every child going to public and non-public schools as about 27 or 30 million dollars. Since about one-fifth of the children attend non-public schools that would be five or six million dollars for them.

In the area of special education we have been concerned about legal decisions and interpretations and have provided very much in the way of special education to students who attend private or parochial schools. The same is true of guidance and other pupil personnel services.

In vocational education it is possible for a student in Illinois to be enrolled in both a private school in the morning and then to a public vocational education program in the afternoon, or vice versa. In 1977-78, 466 non-public school students attended public vocational centers for two hours a day. That pattern of dual enrollment was pioneered by people in Illinois and is pretty much accepted. The state has moved cautiously and slowly wanting to do things in a way that is completely legal and that would not be challenged.

The third category are schools who say, "We want to help the State of Illinois and we want to help the City of Chicago or smaller communities with complicated educational programs". We need some kind of alternative program for truants, for children who are completely turned off by the regular school, that are rebellious, that are being thrown out. We do - the state spends about five hundred thousand dollars a year on these programs in about ten different communities including Chicago. Private schools run programs for handicapped children. This is a much larger program and established for a longer period of time. Illinois spends about eight or nine million dollars a year for handicapped children in private facilities.

The general theme is "If you pay us in the private sector we will do it at least as well as the public sector, maybe better, and will do it less expensively. So turn to us as an alternative to rely exclusively on the monopolistic system, the public sector". As we say we probably put more dollars into that category than we do in category 1, and category 2 doesn't want any funds at all.

The reason I dwell on this variety is so you can know the state can live with diversity. We do not feel any urgent need to impose a single set of guidelines on vastly different kinds of enterprises. In the public sector as well we have to deal with diversity. Our smallest school in Illinois has seven children. Our largest public school system, the City of Chicago, has more than 500,000 students. We deal with unit districts, kindergarten to grade 12, with high school districts and elementary districts, with area vocational centers, and with joint agreements and special education. We live with variety and diversity in the public sector. There is no reason why we cannot live with diversity and even more variety in the non-public sector. We profoundly respect the differences between the Jewish day schools, the Amish schools, Catholic and Lutheran schools, Francis Parker, or the University of Chicago Lab School, or the various Christian academies, or the other schools which may not have a religious affiliation but may view themselves as most independent.

There is mounting already a concern about consumer protection, about children going to all kind of schools. This is true in the public sector as people worry about the productivity of schools,

about accountability, about whether a high school diploma means as much today as it did ten, fifteen, twenty years ago. And that concern at some point could expand to include those who are attending non-public schools as well. I don't hear a lot of complaints or concerns, I am happy to tell you, about the children attending non-public schools but I have in recent months heard a few questions about some of the very small schools that have founded in the last two or three years. Some of them have as few as twenty, thirty or forty students, some of them with teachers or administrators with very, very minimal experience. In one case I heard of an assistant pastor taking but a two week course in education administration and becoming the principal. Is this enough training to run a school and what happens if something goes wrong? As I say these are unanswered questions. We haven't gotten many complaints, just the beginnings of some concerns.

Another concern is with racial isolation. The State Board of Education has placed a very strong value on integrated education and has moved quite vigorously and asked the staff to work with some forty communities where segregation and desegregation are an issue. Of those forty communities more than thirty of them now either have plans or are in the process of developing plans. One of the concerns in this state as well as in other states is under what circumstances are the non-public schools part of the problem in terms of white flight or white havens, or to what extent can they be part of the solution. We have as far as I know only one example of a white academy being set up to avoid desegregation and that is about four hundred miles to the south of us. But every time a city voluntarily complies with the state rules on desegregation the question comes up. On the whole, I think that non-public schools have behaved admirably. In the City of Springfield we just had a federal court order. The Roman Catholic Bishop participated in the monitoring committee and sent out instructions to all of his parochial schools that they were not to respond to those who were felling desegregation. They would be part of the solution. That kind of agreement in advance to be helpful is very, very useful. Another aspect is the voluntary recruitment by non-public schools of minority students. In visiting the University of Chicago lab school I was very impressed to find out that about 25% of the student body was non-white and that's a significant contribution. That is also the case in the Chicago Archdiocesan schools. There are 40,000 black children attending the Chicago area parochial schools. John Coons and his associates have drafted a proposal for possible consideration by state legislatures which would build in further state incentives for voluntary integration efforts by non-public schools. That also is a possible solution to this, the most troublesome moral issue of our time, that of racial equality and putting an end to racial isolation. I do think that non-public schools have a great contribution to make especially on a voluntary basis.

An interesting issue is the transfer of students back and forth from a public school to a non-public school, and back. Some new private schools are in some cases taking the children who were flunked out or kicked out or dropped out of school. They were going to go to private school for a year or two and what happens when they come back? Do we have to automatically give them credit for a year or two or can we hold them to some kind of standard? Again this is the quality control issue. I have no answers to that particular question. Legal staff said that if they have done equivalent work and have made the same kind of progress they would have made in the public school, there is no reason why they should be denied academic credit

for an equivalent experience. But I do anticipate there could be some debate over the issue of equivalency between the public school and the private school. There may be an area where the State Board of Education needs to be thinking of guidelines for the future if that turns out to be a problem.

There is no way for the public sector to come up with solutions all by ourselves that are going to make sense. It will take more debate, more interaction, and this conference is a good way to get the illumination that one gets by reaching to other states and other people to help us in Illinois arrive at sensible policies. Thank you very much.